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April 19, 2005



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VIA FEDERAL EXPRESS

Cerberus Capital Management, LP
450 Park Avenue
20th Floor
New York, NY 10022-2605
Attention: Steven A. Feinberg and Mark A. Neporent

Re: Daniel D. Crowley v. Cerberus, et al.

Dear Gentlemen:

We represent Mr. Crowley in the above-captioned matter. Reference is made to an Employment Agreement dated as of August 1, 1999 ("Agreement") between Mr. Crowley and Cerberus Capital Management, LP ("Cerberus"). Further reference is made to Section 3.1(b) of the Agreement pursuant to which Mr. Crowley is entitled to participate in such "benefit plans of the Employer that may be in effect from time to time..." Reference is also made to Section 4 of the Agreement which provides that Cerberus will reimburse Mr. Crowley for expenses incurred by Mr. Crowley "in performance of [Mr. Crowley's] duties pursuant to the Agreement". Finally, reference is drawn to Section 9.5 of the Agreement pursuant to which Cerberus agreed that Mr. Crowley will be "covered by and entitled to the benefits of [Cerberus] insurance coverage (in effect from time to time) for its officers and/or executive employees, including its officers and directors liability policies".

As you know, Mr. Crowley has been sued by Arlin M. Adams, Chapter 11 Trustee of the post-confirmation bankruptcy estate of Coram Healthcare Corporation and Coram, Inc. ("Coram"). That lawsuit pertains directly to matters relating to Mr. Crowley's performance of his duties under the Agreement, and other conduct undertaken by Mr. Crowley with respect to Coram. A copy of that lawsuit is enclosed for your reference. Mr. Crowley has also been named as a defendant in an action pending in the United States District Court for the District of Colorado entitled *Genesis Insurance Company v. Daniel D. Crowley, et al.* A copy of that lawsuit is also enclosed for your reference.

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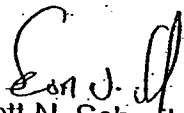
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In accordance with the promises and representations made in the Agreement, Mr. Crowley hereby demands that Cerberus provide to Mr. Crowley the benefits described in the Agreement including, but not limited to insurance coverage, reimbursement of all legal expenses, and indemnity of all claims asserted against Mr. Crowley.

Mr. Crowley reserves all rights against other individuals in addition to the claims he has described against Cerberus in this letter. Nothing in this letter should be construed as a waiver of any rights that Mr. Crowley asserts against any individuals for conduct they have personally undertaken in connection to the activities that form the basis of the claims asserted against Mr. Crowley.

Sincerely,



Scott N. Schreiber

SNS/cmc
Enclosures

cc: Stuart D. Friedman (w/enclosures)
Daniel Crowley (w/o enclosures)
Anthony Valiulis (w/o enclosures)

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SHEET 1 PAGE 1

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ARLIN M. ADAMS, Chapter 11
Trustee of the
Post-Confirmation
Bankruptcy Estates of
CORAM HEALTHCARE CORPORATION,
a Delaware Corporation,
and of CORAM INC.,
a Delaware Corporation,

Plaintiff,

vs.

No. 04-1565 (SLR)

DANIEL D. CROWLEY,
DONALD J. AMARAL,
WILLIAM J. CASEY,
L. PETER SMITH, and
SANDRA L. SMOLEY,

Defendants.

VIDEOTAPED DEPOSITION OF DAVID M. FRIEDMAN

New York, New York

Friday, March 16, 2007

Reported by:
Jennifer Ocampo-Guzman, RPR, CRR

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A P P E A R A N C E S :

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Attorneys for the Deponent

1633 Broadway

New York, New York 10019

BY: ROBERT M. NOVICK, ESQ.

rnovick@kasowitz.com

ALSO PRESENT: JOSE RIJO, Videographer

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March 16, 2007

9:31 a.m.

Deposition of DAVID M. FRIEDMAN,

held at the offices of Kasowitz, Benson,

Torres & Friedman, LLP, 1633 Broadway,

New York, New York, pursuant to subpoena,

before Jennifer Ocampo-Guzman, a

Registered Professional Reporter,

Certified Real-Time Shorthand Reporter

and a Notary Public of the State of New

York.

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THE VIDEOGRAPHER: Here begins the
videotaped deposition of David Friedman,
tape 1, volume I, in the matter of Adams
versus Crowley in the United States
District Court of the District of
Delaware, case number 04-1565. Today is
March 16, 2007 and the time on the video
monitor is 9:31 a.m.

The video operator today is Jose
Rijo representing LiveNote World
Services located at 221 Main Street,
suite 1250, San Francisco, California
94105, phone number (415) 321-2300.

The court reporter is Jennifer
Ocampo of David Feldman Worldwide
reporting on behalf of LiveNote World
Services.

Today's deposition is being taken
on behalf of defendant and is taking
place at 1633 Broadway, New York, New
York.

Will counsel please introduce
themselves and whom they represent.

MR. NOVICK: This is James

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FRIEDMAN

which Mr. Marabito or Mr. Danitz or anybody else didn't -- refused to provide you information in response to a request?

A. No.

Q. At the time you filed the disclosure statement had you had an adequate opportunity to gather the information you needed for the disclosure statement?

A. We thought we had, yes.

Q. Who decided what would be put into the disclosure statement?

A. Probably, probably various lawyers within the office, to the extent that there was a decision, but I don't recall us ever deciding not to include anything. We were just gathering information that we thought was relevant and throwing it all in as we got it.

Q. Now, at the time that you filed the statement, you believed it to be accurate; correct?

A. Yes.

MR. SLAUGHTER: Now, I would like to talk to you about a specific portion

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FRIEDMAN

Q. -- there's some information here on these pages with respect to Mr. Crowley. Do you see that?

A. Yes.

Q. And the disclosure statement at the bottom of 44 and the top of 45 provides:

"Mr. Crowley also serves as a consultant to Cerberus Partners LP, 'Cerberus,' which is a member of the Noteholder Group, with respect to its investments in various health care companies other than the debtor" -- Debtors. Mr. Crowley generally receives a fee from Cerberus for such services, but receives no fee from Cerberus for any services he provides respecting the Debtors."

Do you see that?

A. Yes.

Q. Do you know who collected that information and put it into the disclosure statement?

A. Yes.

Q. Who?

A. It was provided to us by Mr. Marabito.

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FRIEDMAN

of the disclosure statement, because I know that this has been previously marked at least at Mr. Feinberg's deposition and Mr. Weinstein's deposition. It seems silly to mark it again, but I will if you prefer to have it today.

MR. BRESSLER: Whichever your pleasure. We not need repeatedly mark the same document.

MR. SLAUGHTER: I am just going to refer to this as Feinberg's Exhibit 31, which has been marked as Exhibit 31 at Mr. Feinberg's deposition.

Q. Mr. Friedman, I'm obviously not going to ask you to read the entire thing, but does this appear to be the disclosure statement filed by your firm on August 8, 2000, in connection with the filing of the Coram bankruptcy petition?

A. Yes.

Q. Now, directing your attention to pages 44 and 45 --

A. Yes.

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FRIEDMAN

Q. Did you ever ask Mr. Crowley about it at the time that you filed the disclosure statement?

A. I believe I did have conversations with Mr. Crowley about this.

Q. Prior to the time you filed the disclosure statement?

A. Yes.

Q. Okay. And what -- and how many times did you have that conversation, conversations with Mr. Crowley about this?

A. I really don't recall the number of times.

Q. More than once?

A. I don't know.

Q. And what were the substance of those conversations with Mr. Crowley?

A. I think Mr. Crowley volunteered to me that he had a relationship with Cerberus with respect to other matters, and he made a particular point of telling me that his relationship with Cerberus was completely divorced from his role at Coram. And I think I asked him to please make sure that we had

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1 FRIEDMAN
2 accurate language that would describe that
3 relationship.
4 Q. Did you ask to see his agreement
5 with Cerberus?
6 A. I wasn't --
7 MR. NOVICK: Object to the form,
8 foundation.
9 A. I was never informed that there was
10 a written agreement. And I did not
11 understand that there was a written agreement
12 at the time.
13 Q. Do you have a recollection that
14 your firm didn't have a copy of that
15 agreement prior to the time the disclosure
16 statement was filed?
17 A. I don't know whether or not our
18 firm had a copy of it or not. I don't
19 recall, at least sitting here today I don't
20 recall being aware of the agreement at the
21 time.
22 Q. Did you ever ask Mr. Crowley how
23 much he was being paid by Cerberus?
24 A. I don't know.
25 Q. I'm sorry. Was that "I don't know"

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1 FRIEDMAN
2 the December 21st hearing in front of Judge
3 Walrath --
4 A. Yes.
5 Q. --in connection with the
6 confirmation of the plan.
7 A. Which plan, the first plan?
8 Q. The first plan.
9 MR. SLAUGHTER: And in fact, I
10 apologize, I have only one of these, but
11 I'll read it, and if we need to take
12 some time, take a break, make a copy of
13 it, I can do that. But let me read it
14 and then if you could share it around, I
15 have one highlighted and one there, but
16 the portions that I am going to be
17 looking at are on pages 36, 37, and 38.
18 And there is -- and this is a --
19 let me -- should we go off the record
20 make a quick copy of that, so everyone
21 has a copy of that?
22 MR. NOVICK: Why don't we do that.
23 MR. SLAUGHTER: I apologize for not
24 having enough copies.
25 Off the record.

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1 FRIEDMAN
2 or, "no, I don't think I did"?
3 A. I don't know.
4 Q. Did you ever talk to Mr. Feinberg
5 about his relationship, about Cerberus'
6 relationship with Mr. Crowley prior to the
7 time the disclosure statement was filed?
8 A. I don't recall having that
9 conversation.
10 Q. Did you ever speak with anybody
11 from Cerberus about Mr. Crowley's
12 relationship with Cerberus prior to the time
13 the disclosure statement was filed?
14 A. I don't recall having such a
15 conversation.
16 Q. Did you ever ask Mr. Crowley to see
17 any written agreement he might have had with
18 Cerberus prior to the time the disclosure
19 statement was filed?
20 A. I didn't understand such an
21 agreement to exist, and I didn't ask him to
22 see it.
23 Q. I am going to show you a -- I'm not
24 going mark it since it's a transcript, but I
25 am going to show you here a transcript from

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1 FRIEDMAN
2 THE VIDEOGRAPHER: Off the record.
3 The time is 10:40 a.m.
4 (A brief recess was taken.)
5 THE VIDEOGRAPHER: Going back on
6 the record. The time is 10:47 a.m.
7 Q. Mr. Friedman, I've placed in front
8 of you a portion of the transcript from the
9 December 21, 2000 confirmation hearing, and I
10 think you've got pages 36, 37, 38 and 39 in
11 front of you. And I want to talk to you --
12 and before we went off the record, you had
13 testified that, I think, either in words or
14 effect that you didn't know of a written
15 contract with -- between Mr. Crowley and
16 Cerberus prior to the time that a plan was
17 filed.
18 A. That's correct.
19 Q. And starting on 36, "THE COURT:" --
20 36, line 5 -- "Well, are you suggesting,
21 however, that Mr. Crowley's relationship is
22 adequately disclosed?"
23 Line 8, "MR. FRIEDMAN: Yes,
24 certainly.
25 "THE COURT: Well, does the

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1 FRIEDMAN
2 disclosure statement mention that the
3 consulting agreement is subject to a written
4 contract where he is receiving a million
5 dollars a year?
6 "MR. FRIEDMAN: Well, no, it
7 doesn't say that but there are two points
8 with respect to that."
9 And then there's colloquy back and
10 forth with the court, and I'm sure if counsel
11 wants me to include it, he can ask some
12 questions about it, but I'm going to focus on
13 page 37 there where you give an answer in the
14 middle of the page, Mr. Friedman says, "But,
15 Your Honor, I think that when you tell
16 someone public that your chairman has a
17 business relationship with Cerberus, I think
18 anybody who is interested in the terms is
19 free to ask. Frankly, Your Honor, we would
20 have put it in without hesitation had anyone
21 asked" -- "anybody asked. We just didn't
22 think of it. But, Your Honor, certainly
23 there was no attempt to hide from it."
24 And then again on page 38,
25 Mr. Friedman, near the top, your first

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1 FRIEDMAN
2 filing.
3 My recollection, sir, is that there
4 was some point after the bankruptcy began
5 that I became aware of a document that was
6 called an employment agreement, rather than a
7 consulting agreement, and read it and
8 understood that rather than -- what I
9 understood to be an ad hoc relationship of
10 providing fees for services on occasion, that
11 it was actually an employment agreement with
12 a salary, with affirmative commitments that
13 Mr. Crowley made to Cerberus, none of which I
14 was aware of when the bankruptcy was filed.
15 Q. You knew, however, that Mr. Crowley
16 was receiving a fee from Cerberus prior to
17 the time the bankruptcy was filed?
18 A. I knew that he was paid by
19 Cerberus -- by Cerberus for consulting
20 services, but I did not understand that him
21 to be an employee of Cerberus on a fixed
22 salary, or that there were other traditional
23 types of employee commitments that he had
24 made to Cerberus.
25 MR. SLAUGHTER: I am going to move

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1 FRIEDMAN
2 response, the court says, "You don't think it
3 was relevant to advise the court about that?"
4 "MR. FRIEDMAN: Your Honor,
5 candidly we certainly knew that Mr. Crowley's
6 relationship would come out. I mean the day
7 after the disclosure statement was approved,
8 we gave everything we had in our files to the
9 equity committee. I mean there was no secret
10 about the relationship."
11 Does that refresh your
12 recollection, Mr. Friedman, that you had the
13 consulting agreement between Crowley and
14 Cerberus at the time the disclosure statement
15 was filed?
16 MR. NOVICK: I will just note for
17 the record that those quotations were
18 taken out of a larger colloquy, and that
19 it goes on for a number of pages, not
20 all of which are even in front of the
21 witness, and with that qualification,
22 you can answer.
23 A. Yeah, I mean actually it just -- it
24 makes me further certain that I did not have
25 the agreement before the -- before the

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1 FRIEDMAN
2 to strike that answer, and I will ask it
3 again.
4 Q. You knew, however, that Mr. Crowley
5 was receiving a fee from Cerberus prior to
6 the time the bankruptcy was filed; isn't that
7 correct?
8 A. When you say "a fee," the answer is
9 no. I understood that he was being paid for
10 services, but when you say "a fee," I did not
11 know that there was a fixed fee involved.
12 Q. You knew that he was being paid by
13 Cerberus for services?
14 A. Yes, that's correct.
15 Q. You never asked him how much he was
16 being paid?
17 A. At the time I don't believe I did.
18 Q. Why not?
19 A. I don't know. I think I probably
20 should have.
21 Q. Was it a failing on your part not
22 to ask that question?
23 A. Well, in hindsight it certainly
24 was. I mean at the time we were trying to
25 get a disclosure statement on file, and we

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1 FRIEDMAN
2 court. And from our perspective, to the
3 extent that his compensation were considered
4 relevant by any party, including
5 shareholders, we had no doubt that the --
6 that the final disclosure statement would
7 contain whatever incremental information
8 people thought was necessary.
9 Q. Well, if you were so sure that the
10 terms were going to come out, why didn't you
11 figure out what they were before the
12 disclosure statement was filed?
13 A. I think this was probably put
14 together on August 7th at, you know,
15 midnight, and we were trying to get something
16 on file the next day. We were under a lot of
17 pressure to get it on file the next day, and
18 we left it to Mr. Marabito to provide us with
19 this language, and this was a draft
20 disclosure statement. We were going to file
21 it, and then we were going to make whatever
22 changes to it, needed to be made to comply
23 with the Court's directions and the
24 informational requests of any stakeholder.
25 Q. I think you just told me that you

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1 FRIEDMAN
2 that the employment agreement ultimately
3 presented.
4 So I understood that it is always
5 important to disclose every affiliation
6 between management and stakeholders. But
7 there are orders of magnitude, and I did not
8 understand the order of magnitude with
9 respect to Mr. Crowley and Cerberus to be
10 what it was at the time this was filed.
11 MR. SLAUGHTER: I am going to --
12 Q. I want to direct your attention now
13 for a moment, Mr. Friedman, to Richard Levy.
14 Prior -- do you know who Richard Levy is?
15 A. Yes.
16 Q. Who is Richard Levy?
17 A. He is a lawyer currently employed
18 by Jenner & Block, who was the lawyer for the
19 equity committee in the Coram case.
20 Q. Have you had experience with
21 Mr. Levy prior to his representation of the
22 equity committee on the Coram case?
23 A. No.
24 Q. When did you first become aware
25 that Mr. Levy was representing individuals

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1 FRIEDMAN
2 thought it was an important issue, you knew
3 it was an important issue before the time of
4 the filing, in fact you knew it not only just
5 days before, but a certain good amount of
6 time before?
7 A. Yes.
8 Q. But if it was that important, why
9 didn't you try to find out more about the
10 terms of that relationship prior to the time
11 the disclosure statement was filed, rather
12 than just wait for people to object to it
13 later?
14 A. Well, because we relied upon
15 Mr. Marabito to give us the language, and
16 this is what we got, and it was August 8th
17 and it had to be filed, and it was a draft.
18 And drafts are typically amended, and we
19 considered this issue to be one would be
20 amended if there was more information that
21 was needed.
22 Now I just have to tell you, I did
23 not have any sense that the relationship
24 between Mr. Crowley and Cerberus was of a
25 seven-figure nature and of the dimensions

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1 FRIEDMAN
2 with an interest in the Coram matter?
3 A. I think that sometime shortly
4 before or after in the bankruptcy filing we
5 received a letter from Mr. Levy.
6 MR. SLAUGHTER: Let me give you two
7 exhibits. What number are we on?
8 THE WITNESS: 6 and 7.
9 MR. SLAUGHTER: The first letter,
10 which I am going to label Exhibit 6, and
11 a June 7th letter which I will label
12 number 7.
13 (Exhibit Friedman-6, Letter dated
14 6/1/00, marked for identification, this
15 date.)
16 (Exhibit Friedman-7, Letter dated
17 6/7/00, marked for identification, this
18 date.)
19 Q. Mr. Friedman, the June 6th letter
20 -- excuse me -- Exhibit 6 is a June 1st
21 letter addressed to Mr. Crowley signed by
22 Mr. Levy, and the June 7th letter -- excuse
23 me. Exhibit 7 is a June 7th letter from you
24 to Mr. Levy in response.
25 Is this the correspondence that you

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1 FRIEDMAN
 2 the board at the time that Mr. Crowley was
 3 hired by Coram; isn't that right?
 4 A. I think he was, yes.
 5 Q. And he knew the terms?
 6 A. Presumably.
 7 Q. Mr. Amaral knew the terms too,
 8 didn't he?
 9 A. I don't think so. Put it this way,
 10 if he did, that's not what he told me.
 11 Q. Okay. And you said that all of
 12 the -- whether they knew the specific terms
 13 of the contract relationship between
 14 Mr. Crowley and Cerberus, the directors knew
 15 that there was such a relationship?
 16 A. Yes.
 17 Q. Was there anything in your view
 18 that prevented any of those directors from
 19 requesting more specific information from
 20 Crowley?
 21 A. No.
 22 Q. Do you know if Mr. Crowley ever
 23 refused at any time to provide information
 24 about the substance of his agreement with
 25 Cerberus upon being asked to?

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1 FRIEDMAN
 2 understood it to be a full, you know,
 3 essentially a full-time employment agreement.
 4 Q. You knew that he was receiving a
 5 fee from Cerberus?
 6 A. Yes.
 7 Q. Okay. Did you ever ask what that
 8 fee was?
 9 A. Not at the time, no.
 10 Q. Did you ever -- did you ever speak
 11 to Mr. Feinberg about the relationship
 12 between Cerberus and Mr. Crowley at the time
 13 of the, prior to the time the first
 14 disclosure plan was filed?
 15 MR. NOVICK: Disclosure statement?
 16 MR. SLAUGHTER: Disclosure
 17 statement. Thank you.
 18 A. I'm quite sure I did not speak to
 19 Mr. Feinberg about it.
 20 Q. Why not?
 21 A. I tried not to speak with Mr.
 22 Feinberg about this at all. I thought Mr.
 23 Feinberg was going to be, as I understood it,
 24 he was going to be exiting the board with the
 25 company going into bankruptcy. He was

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1 FRIEDMAN
 2 A. I'm not aware of that, no.
 3 Q. Moving now on to the second time
 4 period, again the time period in which you
 5 are preparing, you or your firm is preparing
 6 the disclosure statement.
 7 A. Right.
 8 Q. You viewed at that time the
 9 relationship between Cerberus and Mr. Crowley
 10 as an important one in connection with the
 11 disclosure statement?
 12 A. Yes.
 13 Q. But you didn't ask to see -- you
 14 didn't ask for the specific terms of that
 15 agreement?
 16 A. Again, you are presuming that I was
 17 aware of an agreement. I really, again
 18 whether I should have divined this or not is
 19 debatable but in my mind at the time this was
 20 being become prepared, I did not understand
 21 the relationship to be one that was
 22 formalized in an agreement. I thought he
 23 just doing sort of ad hoc consulting work,
 24 which did not -- which was not on my radar
 25 screen at the level it would have been had I

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1 FRIEDMAN
 2 clearly in the creditor camp and I didn't
 3 think it was appropriate for me to spending a
 4 lot of time talking to him about what Coram
 5 should be doing.
 6 Q. Okay. You -- but knowing that this
 7 was going to be an important issue, you
 8 testified today that you knew that the
 9 relationship between the CEO of the debtor
 10 and one of the debtors' note holders would be
 11 an important issue, what actions did you take
 12 to learn the full extent of that
 13 relationship?
 14 A. When?
 15 Q. Prior to the time the disclosure
 16 statement was filed.
 17 A. I talked to Allen Marabito, who I
 18 considered to be a sophisticated person with
 19 a law degree and one who -- who presented
 20 himself as being extremely close to Crowley
 21 and one who was quite familiar with his --
 22 his relationships and background, and I asked
 23 Mr. Marabito to give me what he considered to
 24 be appropriate disclosure with respect to
 25 Mr. Crowley's relationship, and I really

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FRIEDMAN

1 was filed.

2 A. The answer is, no.

3 But I want to put this in context,
4 just so we have a clear record here. It is a
5 common practice for lenders to have working
6 relationships with crisis managers and to
7 recommend that those crisis managers be
8 engaged by their borrowers. It is quite
9 common in the restructuring world for a
10 lender to agree with the borrower that it
11 will only lend money to the borrower if the
12 borrower hires the crisis manager selected by
13 the lender. Lenders have significant
14 influence in how borrowers operate,
15 especially when they're in default, and that
16 is something that's common.

17 What is not common is there being
18 an employment agreement between the crisis
19 manager and the lender. That is highly
20 uncommon. What is even more uncommon is an
21 employment agreement that contains the types
22 of covenants and commitments that this
23 employment agreement had.

24 Had I known about the existence of
25

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FRIEDMAN

1 MR. SLAUGHTER: Move to strike
2 everything after the "no" --

3 MR. NOVICK: Denied.

4 MR. SLAUGHTER: -- as
5 nonresponsive.

6 Actually you're not the judge.

7 MR. NOVICK: That the point. There
8 isn't one here.

9 MR. BRESSLER: And it's your
10 witness, so I'm not moving to strike it.

11 MR. SLAUGHTER: It's actually a
12 third-party witness, Mr. Bressler, as
13 I'm sure you're perfectly aware.

14 Q. Are you aware of any harm that was
15 caused by Mr. Crowley's relationship with
16 Cerberus as it pertains to Coram?

17 A. Other than the harm relating to
18 denial of confirmation twice?

19 Q. Yes.

20 A. No.

21 Q. And did not -- each of those
22 denials, even with full knowledge of
23 Mr. Crowley's relationship with Cerberus, you
24 were nevertheless surprised that each of
25

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FRIEDMAN

1 that agreement prior to the filing for
2 bankruptcy, I am quite sure I would have
3 given advice to the board relating to whether
4 or not that was appropriate and what steps
5 should be considered to mitigate the
6 potential conflict.

7 So just so you understand and the
8 record is clear, there is a significant
9 difference between a lender employing a
10 crisis manager and a lender selecting a
11 crisis manager to work for a borrower. The
12 latter happens frequently, and typically a
13 crisis manager business under those
14 circumstances, even though it's getting
15 business from the lender in the future, the
16 crisis manager is in a position to act
17 appropriately.

18 It's where -- it's where that
19 employment agreement existed that I felt, as
20 I said earlier, unique facts here. And those
21 facts, had they been known to me back in July
22 of 2000 or August of 2000, I would in all
23 likelihood have caused a whole host of
24 different advice to have been given.
25

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FRIEDMAN

1 those plans were denied?

2 A. As I've so testified.

3 Q. And you told the -- you endorsed, I
4 think is what you testified earlier, you
5 endorsed the plan developed by you and others
6 to bring in Goldin as an independent
7 restructuring advisor as a means to get a
8 second plan approved; correct?

9 A. Yes.

10 Q. And you understood that the board
11 was going to be relying on your
12 recommendation?

13 A. In part, yes.

14 Q. Do you recall ever telling anybody
15 that you thought that Mr. Crowley was the
16 smartest guy you've ever met?

17 A. As of that -- as of what date?
18 I've met a lot of smart people over the
19 years.

20 Q. Well, as of 2001, was Mr. Crowley
21 one of the smartest guys you've ever met?

22 A. He's a very smart guy.

23 Q. Directing your attention to
24 Exhibit 3, notes of your interview with
25

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SHEET 1 PAGE 1

PAGE 3

IN THE UNITED STATES DISTRICT COURT,
FOR, THE DISTRICT OF DELAWARE

ARLIN M. ADAMS, Chapter II)
Trustee of the Post-) Case No.
Confirmation Bankruptcy of) 04-1565
Estates of Coram Healthcare)
CORPORATION, and of CORAM,)
INC., a Delaware corporation,)
Plaintiff,)

vs.)

DANIEL D. CROWLEY, DONALD J.)
AMARAL; WILLIAM J. CASEY; L.)
PETER SMITH; and SANDRA L.)
SMOLEY,)

Defendants.)

Wednesday, March 21, 2007
10:20 a.m.

Deposition of HARRISON GOLDIN held at
the offices of Cerberus Capital Management, L.P.,
1177 Avenue of the Americas, New York, New York
pursuant to Notice, before Danielle Grant, a
Notary Public of the State of New York.

IT IS HEREBY STIPULATED AND
AGREED, by and among counsel for
the respective parties hereto, that
the filing, sealing and certification
of the within deposition shall be and
the same are hereby waived.

IT IS FURTHER STIPULATED AND
AGREED that all objections, except as
to the form of the question, shall be
reserved to the time of the trial.

IT IS FURTHER STIPULATED AND
AGREED that the within deposition may
be signed before any Notary Public
with the same force and effect as if
signed and sworn to before the Court.

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PAGE 4

A P P E A R A N C E S:

SCHNADER HARRISON SEGAL & LEWIS, LLP
Counsel for Plaintiff Arlin Adams, Trustee
1600 Market Street, Suite 3600
Philadelphia, PA 19103-7286
BY: WILBUR L. KIPNES, ESQ.
MICHAEL J. BARRIE, ESQ.
wkipnes@schnader.com
mbarrie@schnader.com

KEKER & VAN NEST, LLP
Counsel for Daniel Crowley
710 Sansome Street
San Francisco, California 94111
BY: R. JAMES SLAUGHTER, ESQ.
rslaughter@kvn.com

KRAMER LEVIN NAFTALIS & FRANKEL, LLP
Counsel for Witness
1177 Avenue of the Americas
New York, New York 10036
BY: KENNETH H. ECKSTEIN, ESQ.
PHILIP BENTLEY, ESQ.
keckstein@kramerlevin.com
pbentley@kramerlevin.com

HARRISON J. GOLDIN, called as a
witness, having been first duly sworn by
Danielle Grant, a Notary Public within and
for the State of New York, was examined and
testified as follows:

BY MR. KIPNES:

Q Good morning, Mr. Goldin. My name
is Will Kipnes. I represent Arlin M. Adams as
Chapter 11 Trustee of the Bankruptcy Estates of
Coram in the lawsuit pending in the United States
District Court, District of Delaware against
Daniel D. Crowley and others.

Would you tell me a little bit
about the business of Goldin Associates?

A Yes, sir. Goldin Associates is a
financial advisory firm that specializes in
distressed situations. We act either as
financial advisors to debtor companies or in
other instances to their institutional creditors.
We also perform interim management services.

We provide litigation support
services in distressed situations and we act
extensively as a fiduciary, as a trustee, as an
examiner, as a special master to the courts,

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1 H. Goldin
 2 A I reached the conclusion, as I told
 3 you, and you know that Mr. Crowley did not
 4 conduct himself in a manner designed or
 5 calculated to diminish the interests of Coram to
 6 favor the opinions of any other party and
 7 interest, the converse of that is he conducted
 8 himself in a manner to maximize the interest of
 9 Coram.
 10 Q Did you come to a conclusion about
 11 whether or not the second plan of reorganization
 12 was proposed in good faith?
 13 A I did.
 14 Q What was your conclusion?
 15 A That it was.
 16 Q You testified earlier and it's
 17 referenced here in your Paragraph 98 that you
 18 attributed some damage from Mr. Crowley's
 19 conflict, do you recall that testimony?
 20 A Yes, I do.
 21 Q And I think you mentioned, or it's
 22 in this report, that there's two categories of
 23 damages you attributed to Mr. Crowley's conduct?
 24 A Correct.
 25 Q Can you describe the categories?

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1 H. Goldin
 2 services that resulted from the failure of the
 3 case to be confirmed in December 2000.
 4 Q So, are those fees then associated
 5 not with the efforts to get the first plan
 6 adopted, but fees associated after the first
 7 plan?
 8 A That's my recollection.
 9 Q Did you have an understanding about
 10 whether the Equity Committee challenged the
 11 second proposed plan of the debtor on issues
 12 other than Mr. Crowley's conflict?
 13 A Yes, I seem to remember that the --
 14 among the Equity Committee objections was an
 15 assertion that the finding that the company was
 16 insolvent was incorrect.
 17 Q Did you have an understanding about
 18 whether or not the Equity Committee and the
 19 debtors, for that matter or other interested
 20 parties, undertook efforts to value the company
 21 to figure out if that was true or not true?
 22 A I don't recall specifically and in
 23 detail, but I seem to recall that Deloitte &
 24 Touche undertook some related efforts in
 25 connection with its services to the Equity

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1 H. Goldin
 2 A Yes, the first related to the
 3 professional and related expenses that arose as
 4 the result of the Court having concluded that
 5 Mr. Crowley had a conflict of interest when she
 6 ruled in December of 2000, therefore prolonging
 7 the bankruptcy.
 8 And the second category was the
 9 inability of the business to capitalize earlier
 10 on the advantages of emerging from bankruptcy
 11 with the multiplier effect that that has, and
 12 that process having had to be delayed because
 13 of Mr. Crowley's conflict of interest and the
 14 prolongation of the period in which Coram was
 15 in Chapter 11.
 16 Q I'm going to take the out-of-pocket
 17 damages, I think if you look at page one of your
 18 report, your updated report, there is a reference
 19 here, you estimated those damages at five to
 20 \$6 million?
 21 A Yes, sir.
 22 Q How did you determine that figure?
 23 A I don't remember specifically, but I
 24 do know that we undertook to try to put a price
 25 tag on all of the incremental professional

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1 H. Goldin
 2 Committee.
 3 Q Do you know if the Equity Committee
 4 hired any other experts with respect to
 5 valuation?
 6 A I don't recall.
 7 Q Does your analysis regarding those
 8 professional fees depend upon the nature of how
 9 those fees were spent?
 10 A I don't understand the question.
 11 Q Does your analysis regarding the
 12 damages regarding the professional fees, for
 13 instance, only spent investigating issues with
 14 respect to the conflict of interest?
 15 Does your analysis regarding the
 16 out-of-pocket damages depend at all on the
 17 nature of how those fees are spent? That is,
 18 whether they were spent investigating the
 19 alleged conflict issue or whether they were
 20 some other matters?
 21 MR. KIPNES: Objection to the form.
 22 A I'm unable to answer the question
 23 because I'm unable to understand, but if I did, I
 24 would not be able to answer it.
 25 Q Did you have an understanding

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1 H. Goldin
2 whether or not -- strike that.
3 Did you have an understanding
4 about whether Mr. Crowley at some point in time
5 left Coram?
6 A I heard this morning from Mr. Kipnes
7 that he left Coram a year after the appointment
8 after the trustees.
9 Q I represent to you that he left in
10 March 2003 and I further represent to you that
11 the trustee subsequently proposed a new plan of
12 reorganization and that the Equity Committee
13 proposed a plan of reorganization and the Equity
14 Committee opposed the plan. Does that change
15 your view about the likelihood of the costs
16 associated with the conflict in light of the fact
17 that the Equity Committee has opposed the plan of
18 Mr. Eckstein.
19 MR. BENTLEY: Objection to the form.
20 MR. KIPNES: Objection to the form
21 of the question.
22 A You lost me. Had you not lost me,
23 it's a question that I do not believe I could
24 answer without reflection and covering the facts
25 more closely than I could do answering in a

1 H. Goldin
2 period of years and that's what we calculated.
3 Q I want to direct your attention to
4 the \$6.3 million payment. Do you recall we
5 discussed that some today?
6 A Yes.
7 Q And you concluded that while the
8 payment was troublesome in your view, ultimately
9 it caused no damage to Coram?
10 A Correct.
11 Q Can you tell why it's your view it
12 caused no damage?
13 A Because of an answer I have given
14 more than once today, is that the company was
15 deeply insolvent. As a consequence, any value
16 available would accrue to the benefit of the
17 constructive Noteholders. Therefore a payment to
18 the Noteholders that might have not been made to
19 the Noteholders would -- to the extent of its
20 availability, would have gone to the Noteholders
21 and that is the reason. It didn't cause any harm
22 to the company.
23 Q I want to direct your attention to
24 pages 107 and 108 of your report addressing
25 additional reasons that there was no harm

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1 H. Goldin
2 deposition.
3 Q Let's move to the second set of
4 damages that you concluded were related to in
5 Mr. Crowley's conflict. You say delay in
6 emerging from bankruptcy?
7 A Yes.
8 Q How did you calculate the 7 to
9 9 million figure in your report?
10 A Our evaluation analysis presupposed
11 based on a careful review of a whole variety of
12 financial inputs what the financial status of
13 Coram would be at various points in time and
14 included an assumption, as I suggested a view
15 minutes ago to you, that immediately in the
16 aftermath of its emergence from bankruptcy,
17 Coram, for reasons I can get into if you like me
18 to, would enjoy a bounce, a post Chapter 11
19 bounce. That bounce would then have a leverage
20 effect on the value of the company going forward.
21 The delay in the achievement, in
22 the realization of the economic advantage as
23 driving from a company's exit from chapter 11
24 causes not only the immediate delay in those
25 advantages, but has a multiplier effect over a

1 H. Goldin
2 associated with the \$6.3 million payment. Do you
3 recall concluding that Coram's cash position
4 improved shortly after the payment was made and
5 that was an additional reason the payment hadn't
6 caused -- improved as a result of the sale?
7 A Yes, I have a general recollection,
8 not a specific recollection. But I know that the
9 report refers to that and I have no reason not to
10 endorse and confirm what it was at the time I
11 wrote the report.
12 Q Did you come to a conclusion
13 regarding the reasonableness of the judgment that
14 had been made to make the \$6.3 million payment in
15 cash rather than in kind?
16 A I think we speak to that in the
17 report, but the overriding conclusion was the
18 payment was troublesome.
19 Q I'm going to direct your attention
20 to Exhibit 19, the 2005 hearing transcript. I'll
21 further direct your attention to pages 43 and 44
22 to that transcript.
23 The bottom of Page 42, you were
24 asked a question, "Did you consider whether or
25 not it was appropriate for Coram to pay

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<p>CONFIDENTIAL IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE</p> <p>ARLIN M. ADAMS, Chapter 11 : Trustee of the : Post-Confirmation Bankruptcy : Estates of CORAM HEALTHCARE : CORPORATION, a Delaware : Corporation and of CORAM, : INC., a Delaware Corporation, : Plaintiff : CASE NO. vs. : 04-1565</p> <p>DANIEL D. CROWLEY; DONALD J. : AMARAL; WILLIAM J. CASEY; : L. PETER SMITH; AND SANDRA L. : SMOLEY, : Defendants :</p> <p>Monday, March 26, 2007 9:46 a.m.</p> <p>Videotaped deposition of CHRISTINA MORRISON, held at the law offices of Ballard Spahr Andrews & Ingersoll, LLP, 1735 Market Street, 51st Floor, Philadelphia, Pennsylvania, 19103, pursuant to notice before Cynthia A. Whyte, Registered Professional Reporter and Notary Public.</p>	<p>1 A P P E A R A N C E S: 2 SCHNADER HARRISON SEGAL & LEWIS LLP 3 Counsel for Plaintiff Arlin Adams, Trustee 1600 Market Street Suite 3600 Philadelphia, PA 19103 (215) 751-2336 4 BY: WILBUR L. KIPNES, ESQ. wkipnes@schnader.com 5 6 7 8 KEKER & VAN NEST LLP 9 Counsel for Defendant Daniel Crowley 710 Sansome Street San Francisco, CA 94111-1704 (415) 391-5400 10 BY: WARREN A. BRAUNIG, ESQ. wbraunig@kvn.com 11 12 AND: ELLIOT R. PETERS, ESQ. epeters@kvn.com 13 14 15 DEUTSCHE BANK Counsel for Witness Christina Morrison Deutsche Bank AG New York Legal Department 60 Wall Street New York, NY 10005-2858 (212) 250-7332 16 17 18 BY: CHARLIE GAMBINO, ESQ. charlie.gambino@db.com 19 20 21 22 ALSO PRESENT: VINCENZO PETULLA, 23 Videographer 24 25</p>
Page 3	Page 4
<p>1 IT IS HEREBY STIPULATED AND 2 AGREED by and among counsel for the 3 respective parties hereto that the 4 filing, sealing and certification of the 5 within deposition shall be and the same 6 are hereby waived.</p> <p>7 IT IS FURTHER STIPULATED 8 AND AGREED that all objections, 9 except as to the form of the 10 question, shall be reserved to the 11 time of the trial.</p> <p>12 IT IS FURTHER STIPULATED AND 13 AGREED that the within deposition may be 14 signed before any Notary Public with the 15 same force and effect as if signed and 16 sworn to before the Court.</p>	<p>1 I N D E X 2 WITNESS: PAGE 3 CHRISTINA MORRISON 4 By Mr. Braunig 7, 181 5 By Mr. Kipnes 136 6 MORRISON EXHIBITS 7 NO. DESCRIPTION PAGE 8 Exhibit 1 Memo, 6/5/01, to List from Ms. Gould 25 9 10 Exhibit 2 Letter, 1/16/99, to Mr. Smith from Ms. Morrison 29 11 12 Exhibit 3 Excerpt of Transcript, 10/26/01 39 13 Exhibit 4 Letter, 7/12/99, to Mr. Kahn from Mr. Crowley 43 14 Exhibit 5 Memo, 9/20/99, to Mr. Meffe and Ms. Kopta from Ms. Morrison and Mr. Guthner 54 16 17 Exhibit 6 Offering Memorandum 62 18 19 Exhibit 7 "Project Caddy, Confidentiality Agreements Proposal Packets Distributed December 1999" 71 20 21 Exhibit 8 Second round bid letters 74 22 Exhibit 9 "Buyer Due Diligence Questions 1-31-00.doc 82 23 24 Exhibit 10 Minutes, 2/10/00 84 25</p>

Pages 1 to 4

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<p>1 MR. GAMBINO: Objection.</p> <p>2 MR. KIPNES: -- to the form of</p> <p>3 the question.</p> <p>4 Warren, can we have an</p> <p>5 understanding if Mr. Gambino or I object</p> <p>6 to the form, that it's a joint objection</p> <p>7 so the other doesn't have to jump in.</p> <p>8 MR. BRAUNIG: I'll agree to</p> <p>9 that.</p> <p>10 Q. Do you need to have the question</p> <p>11 repeated?</p> <p>12 A. Yes.</p> <p>13 MR. BRAUNIG: Could we read it</p> <p>14 back, please?</p> <p>15 (The court reporter read the</p> <p>16 record as requested.)</p> <p>17 MR. GAMBINO: Only if you can</p> <p>18 answer the question.</p> <p>19 A. I'm not sure how to answer that</p> <p>20 question.</p> <p>21 Q. Okay. I'm going to rephrase.</p> <p>22 In your experience does the fact</p> <p>23 that a business unit is requiring a lot of</p> <p>24 cash -- strike that.</p> <p>25 In your experience have you seen</p>	<p>1 situations in which a business is using a lot</p> <p>2 of cash be a basis for a company's decision to</p> <p>3 sell a unit?</p> <p>4 A. Did not see that very often. Didn't</p> <p>5 typically sell a lot of divisions, so...</p> <p>6 Q. Was there ever mention to you during</p> <p>7 the process of the sale of CPS that CPS was</p> <p>8 not a core business for Coram, that it was not</p> <p>9 aligned with its infusion business?</p> <p>10 A. I don't recall any real specific</p> <p>11 discussions about that. They wanted to focus</p> <p>12 on the home infusion business at the time, but</p> <p>13 I don't recall anything of a more strategic</p> <p>14 nature than that.</p> <p>15 Q. When we talked earlier about the</p> <p>16 engagement letter and the paragraph related to</p> <p>17 the fees, you mentioned -- am I stating it</p> <p>18 correctly that you mentioned that Deutsche</p> <p>19 Bank had incentives to help CPS -- to help</p> <p>20 Coram sell CPS for as high a value as</p> <p>21 possible?</p> <p>22 A. The engagement letter was structured</p> <p>23 such that the more that CPS was sold for, the</p> <p>24 higher our fee would be.</p> <p>25 Q. At all times did Deutsche Bank do</p>
Page 47	Page 48
<p>1 everything it could to get the highest</p> <p>2 possible price for Coram's shareholders?</p> <p>3 A. Yeah. Our objective was to present</p> <p>4 all the options to the board. Price isn't</p> <p>5 always the only consideration. There's also</p> <p>6 other things in the agreement that might play</p> <p>7 into it. So you could have a high price but</p> <p>8 have a very stringent agreement that could</p> <p>9 sometimes change that. Our job was to bring</p> <p>10 all of those options forward to the board and</p> <p>11 let them make that choice.</p> <p>12 Q. At any time did Deutsche Bank --</p> <p>13 strike that.</p> <p>14 Did Deutsche Bank do everything it</p> <p>15 could to get Coram as good a deal as Coram was</p> <p>16 going to get in the sale of CPS?</p> <p>17 A. Yes. We went through -- the fact</p> <p>18 that the sale had been publicly announced by</p> <p>19 Coram, that they were seeking to sell the</p> <p>20 business, really brought a lot of people out</p> <p>21 to take a look at the business. And we</p> <p>22 followed up with everything and investigated</p> <p>23 everything. So went through -- whether we</p> <p>24 contacted them or they contacted us, went</p> <p>25 through and reviewed each of those</p>	<p>1 alternatives to determine if there was</p> <p>2 something there that would be concrete or not.</p> <p>3 Q. Did you ever form an opinion about</p> <p>4 whether Coram should sell the CPS unit?</p> <p>5 MR. GAMBINO: Objection.</p> <p>6 A. I was hired to sell the business. I</p> <p>7 didn't have any other opinions beyond that.</p> <p>8 Q. Did you ever come to know a person</p> <p>9 named Dan Crowley?</p> <p>10 A. Just by phone. I never met him.</p> <p>11 Q. When were you first introduced to</p> <p>12 Dan Crowley?</p> <p>13 A. I don't recall. It was at some</p> <p>14 point during the process that we were working</p> <p>15 on it, and I don't remember if he called me or</p> <p>16 if I was told to call him, but our initial --</p> <p>17 in fact, our only conversations were</p> <p>18 telephonic.</p> <p>19 Q. How often did you talk to Dan</p> <p>20 Crowley over the seven months between --</p> <p>21 strike that.</p> <p>22 From the time you were first</p> <p>23 introduced to Dan Crowley, was he your primary</p> <p>24 interface at Coram regarding the sale of CPS?</p> <p>25 A. In terms of the deal negotiations</p>

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<p>1 and the deal terms, yes.</p> <p>2 Q. But you continued to interact with</p> <p>3 Dom Meffe and other employees at Coram?</p> <p>4 A. We spent most of our time at the</p> <p>5 company at that point. We had buyers coming</p> <p>6 through and were probably in Orlando fairly</p> <p>7 frequently through that process, so spent most</p> <p>8 of the time with Dom and then Dan by phone.</p> <p>9 Q. About how often would you say you</p> <p>10 spoke to Dan during that period?</p> <p>11 A. I don't recall.</p> <p>12 Q. What was the nature of the calls</p> <p>13 that you had with him? Did he typically call</p> <p>14 you. Did you call him? Were they -- I'll</p> <p>15 leave it at that.</p> <p>16 A. We would -- most of our</p> <p>17 conversations initially were just around the</p> <p>18 deal, getting him updated on where we were in</p> <p>19 the process, who was in, who was out, who we</p> <p>20 were talking to, and where we were in the</p> <p>21 diligence process. So periodically it was</p> <p>22 just updates on the deal. That was most of</p> <p>23 our conversations.</p> <p>24 And then towards the end it was much</p> <p>25 more specific and focused on that one final</p>	<p>1 transaction. So I don't remember who called</p> <p>2 whom, but it was just calls.</p> <p>3 Q. Was it your understanding when you</p> <p>4 first spoke to Dan Crowley that he was the new</p> <p>5 CEO of Coram?</p> <p>6 A. Initially I didn't really know who</p> <p>7 he was, what his official role was. Rick</p> <p>8 was -- had gone and Dan was there and nobody</p> <p>9 officially told us that one was out and one</p> <p>10 was in. I figured that out eventually, but...</p> <p>11 Q. About how long is it --</p> <p>12 approximately how long had you been working on</p> <p>13 this deal before you first spoke to Dan</p> <p>14 Crowley?</p> <p>15 A. I don't recall when I first talked</p> <p>16 to him.</p> <p>17 Q. The process of -- was the process of</p> <p>18 due diligence ongoing when you first spoke to</p> <p>19 Dan Crowley?</p> <p>20 A. Yes.</p> <p>21 Q. Was the process of the auction --</p> <p>22 strike that.</p> <p>23 Was the auction process ongoing when</p> <p>24 you first spoke to Dan Crowley?</p> <p>25 A. It was. I don't remember what point</p>
Page 51	Page 52
<p>1 of the process it was, but we had already</p> <p>2 undergone part of the process because I do</p> <p>3 recall bringing him up to speed as to where we</p> <p>4 were, but I don't recall where we were at that</p> <p>5 point in the process.</p> <p>6 Q. Did Dan Crowley change your marching</p> <p>7 orders or the nature of the scope of your</p> <p>8 engagement when he -- when you first spoke to</p> <p>9 him?</p> <p>10 A. No.</p> <p>11 Q. At any point did Dan Crowley alter</p> <p>12 what you understood to be your job, your role?</p> <p>13 A. The engagement letter was never</p> <p>14 amended or changed.</p> <p>15 Q. What were your perceptions of Dan</p> <p>16 Crowley from the interactions that you had</p> <p>17 with him?</p> <p>18 MR. KIPNES: Object to the form</p> <p>19 of the question.</p> <p>20 A. Didn't have a lot of conversation</p> <p>21 with him other than he was just asking about</p> <p>22 the business and the process, where we were.</p> <p>23 Beyond that I didn't have a lot of</p> <p>24 conversations with him. It was just really</p> <p>25 very focused. He would get on the phone, ask</p>	<p>1 some questions. I would give him the answers</p> <p>2 and the phone call would be over.</p> <p>3 Q. Did you have an understanding of</p> <p>4 whether Dan Crowley was trying to maximize the</p> <p>5 value of the sale to Coram?</p> <p>6 A. I'm not sure how to answer that.</p> <p>7 Did I have an understanding?</p> <p>8 Q. Did you understand that Dan Crowley</p> <p>9 wanted to sell the CPS unit for as much as he</p> <p>10 could sell it for?</p> <p>11 A. We -- towards the end of the process</p> <p>12 we brought forth a handful of specific offers</p> <p>13 at the very end. I don't remember how many</p> <p>14 there were. And he didn't like any of them.</p> <p>15 And so he said, "Stop the process."</p> <p>16 Q. Why didn't he like them in your</p> <p>17 understanding?</p> <p>18 A. He said they weren't enough, and so</p> <p>19 he stopped the process. And we were basically</p> <p>20 suspended for some period of time. I think it</p> <p>21 was up to a month, I don't recall</p> <p>22 specifically, where we just didn't do anything</p> <p>23 and went back to those parties and told them</p> <p>24 that the process was completed, you know, was</p> <p>25 done at that point.</p>

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PAGE 3

1 VOLUME I
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE DISTRICT OF DELAWARE
4 - - -

5 ARLIN M. ADAMS, Chapter 11 :
6 Trustee of the :
7 Post-Confirmation Bankruptcy :
8 Estates of CORAM HEALTHCARE :
9 CORPORATION, a Delaware :
10 Corporation and of CORAM, :
11 INC., a Delaware Corporation, :
12 Plaintiff : CASE NO.
13 vs. : 04-1565
14 DANIEL D. CROWLEY; DONALD J. :
15 AMARAL; WILLIAM J. CASEY; :
16 L. PETER SMITH; AND SANDRA L. :
17 SMOLEY, :
18 Defendants :
19 - - -

20 Tuesday, March 27, 2007
21 9:34 a.m.
22 - - -

23 Videotaped deposition of ARLIN
24 M. ADAMS, held at the law offices of
25 Schnader Harrison Segal & Lewis, LLP,
1600 Market Street, Suite 3600,
Philadelphia, Pennsylvania, 19103,
pursuant to notice before Cynthia A.
Whyte, Registered Professional Reporter
and Notary Public.

1 IT IS HEREBY STIPULATED AND
2 AGREED by and among counsel for the
3 respective parties hereto that the
4 filing, sealing and certification of the
5 within deposition shall be and the same
6 are hereby waived.

7 IT IS FURTHER STIPULATED
8 AND AGREED that all objections,
9 except as to the form of the
10 question, shall be reserved to the
11 time of the trial.

12 IT IS FURTHER STIPULATED AND
13 AGREED that the within deposition may be
14 signed before any Notary Public with the
15 same force and effect as if signed and
16 sworn to before the Court.
17
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21
22
23
24
25

PAGE 2

PAGE 4

1 A P P E A R A N C E S :
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10 bbressler@schnader.com
11 AND: RICHARD A. BARKASY, ESQ.
12 rbarkasy@schnader.com
13
14 KEKER & VAN NEST LLP
15 Counsel for Defendant Daniel Crowley
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17 San Francisco, CA 94111-1704
18 (415) 391-5400
19 BY: ELLIOT R. PETERS, ESQ.
20 epeters@kvn.com
21 AND: WARREN A. BRAUNIG, ESQ.
22 wbraunig@kvn.com
23
24 ALSO PRESENT: VINCENZO PETULLA,
25 Videographer

I N D E X		
WITNESS:		PAGE
ARLIN M. ADAMS, ESQ.		
By Mr. Peters		5
ADAMS EXHIBITS		
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1 appears to bear your signature.
 2 (Adams Exhibit 5 was marked for
 3 identification.)
 4 Q. So the first question with respect
 5 to Adams 4 -- and if you want to take some
 6 time to review it, you go right ahead.
 7 A. Go ahead. Ask me the question.
 8 Q. Does Adams 4 bear your signature?
 9 A. Is that my signature on the last
 10 page? Yes.
 11 Q. And was this an agreement that you
 12 as trustee entered into with Dan Crowley?
 13 A. When you say "is this," the letter?
 14 Q. Correct.
 15 A. It was an agreement that was entered
 16 into by Barry Bressler with Crowley's
 17 attorney, Mr. Schreiber, which I saw and
 18 approved as to terms and conditions. That's
 19 what it says.
 20 Q. On whose behalf was Mr. Bressler
 21 acting when he entered into that agreement?
 22 A. Say that again.
 23 Q. On whose behalf was Barry Bressler
 24 acting when he entered into that agreement?
 25 A. The trustee.

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1 Q. Do you recall what the terms and
 2 conditions were?
 3 A. I do not recall.
 4 Q. Do you recall that one of the terms
 5 and conditions was that Dan Crowley would
 6 continue to render essentially the same
 7 services to Coram as he had before for a term
 8 of up to six months?
 9 A. Correct.
 10 Q. And would he receive during that
 11 period a salary, a base salary, of \$80,000 a
 12 month?
 13 A. Correct.
 14 Q. Was that a raise for him?
 15 A. I think it was an adjustment upward,
 16 yeah.
 17 Q. Pursuant to this agreement, he was
 18 going to be receiving more base monthly salary
 19 than he had been receiving before that?
 20 A. Correct.
 21 Q. Was he also, pursuant to this
 22 agreement, eligible for a stay in performance
 23 payment, a stay bonus?
 24 A. That's what it says.
 25 Q. And how much was that stay bonus?

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1 Q. Who is that?
 2 A. Myself.
 3 Q. So is it a fair statement that this
 4 is an agreement that you entered into with Dan
 5 Crowley?
 6 A. The terms and conditions, yes. See
 7 that? "Agreed as to terms and conditions."
 8 Do you see that on Page 4?
 9 Q. Okay.
 10 And that means that you agreed to
 11 the terms and conditions --
 12 A. To the terms and conditions.
 13 Q. -- contained in this letter?
 14 A. Correct.
 15 Q. And, in doing so, did you understand
 16 that you were acting as the Chapter 11 trustee
 17 for Coram?
 18 A. That's the second time you have
 19 asked that question in three minutes. The
 20 answer is yes.
 21 Q. What were the terms and conditions
 22 that you were agreeing to as you understand
 23 them when you affixed your signature to this
 24 document, Adams 4?
 25 A. The agreement speaks for itself.

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1 A. I forget, but I think it was a
 2 million dollars. I may be wrong. That's my
 3 recollection.
 4 Q. So under this agreement Crowley was
 5 going to receive \$80,000 a month for up to six
 6 months and a million dollars' stay bonus,
 7 correct?
 8 A. If he stayed.
 9 Q. If he stayed, he was going to
 10 receive about a million and a half dollars,
 11 correct?
 12 A. Correct.
 13 Q. And that was agreeable to you on
 14 December 24, 2002, correct?
 15 A. I was willing to go along with it in
 16 order to get rid of the claim that he had in
 17 the amount of \$17 million. You don't always
 18 sign contracts that are agreeable to you, as
 19 you know.
 20 Q. Well, but in signing that contract,
 21 you were agreeing to pay him that amount of
 22 money if he stayed, correct?
 23 A. I was agreeing as the trustee in
 24 consideration of what I was going to get as a
 25 result as the trustee.

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1 Q. And one of the purposes of the
2 hearing on March 3, 2003, the transcript that
3 we have been looking at, was for the court to
4 consider your motion to approve this
5 agreement, Adams 4, correct?

6 A. That's true.

7 Q. So on March 3 of 2003 you were a
8 proponent of the court's approval of this
9 agreement, correct?

10 A. That's correct.

11 Q. You said that Mr. Crowley had a
12 claim for \$17 million?

13 A. He said, yeah; he said that.

14 Q. And did you ever consider whether or
15 not such a claim existed?

16 A. I did consider it.

17 Q. Did you have an understanding of his
18 position as to why he was owed \$17 million?

19 MR. BRESSLER: Object to the
20 form, but he can answer if he knows.

21 A. Yeah, I knew what he was advocating.

22 Q. And what was your understanding in
23 that regard?

24 A. That there was a bonus arrangement
25 that he had entered into that would have

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1 nature of that relationship.

2 Q. And how does a contract which
3 rewarded Mr. Crowley financially for the
4 company's success demonstrate the sinister
5 nature of that relationship?

6 A. Because the exaggerated compensation
7 could only have flowed from that sort of
8 relationship.

9 Q. Do you know whether the board of --
10 the board of directors of Coram approved
11 Mr. Crowley's employment agreement with Coram?

12 A. They may have under the influence of
13 Mr. Feinberg.

14 Q. Did you ever speak to an individual
15 named Don Amaral?

16 A. Did I speak to him? I did not.

17 Q. Do you know who he was at Coram?

18 A. I do.

19 Q. Was he the chairman of the board of
20 Coram?

21 A. At one time, yes.

22 Q. Was he the chairman of the board of
23 Coram when Mr. Crowley entered into his
24 employment agreement with Coram?

25 A. Could have been. I'm not positive

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1 enabled him to support such a claim.

2 Q. He had a written contract with
3 Coram, correct?

4 A. I think that's correct.

5 Q. And pursuant to that written
6 contract there were certain bonus provisions
7 in the contract?

8 A. That's my recollection.

9 Q. And do you also recall that the
10 bonus provisions were triggered by the company
11 hitting certain EBITDA targets?

12 A. That's my recollection.

13 Q. And that, in fact, the company had
14 hit certain EBITDA targets, correct?

15 A. That's my recollection.

16 Q. And so based on your understanding
17 of the agreement Mr. Crowley had a claim or
18 communicated to you that he had a claim for
19 bonus compensation from Coram of approximately
20 \$17 million?

21 A. Yes. And you were asking me about
22 an hour ago of the various negatives that
23 flowed from his relationship with
24 Mr. Feinberg. This is one that I should have
25 mentioned because this shows the sinister

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1 about that. He could have been.

2 Q. In any event, Mr. Crowley had a
3 claim for \$17 million in compensation from
4 Coram and, as a result of all of these events,
5 that money has never been paid to Mr. Crowley,
6 correct?

7 A. Has not been. He has renounced it.
8 He has withdrawn the request for it.

9 Q. And did you ever communicate with
10 him, or, to your knowledge, did any of your
11 attorneys ever communicate with him or his
12 representative about that claim?

13 A. Well, through his attorney we did.

14 Q. And what knowledge do you have of
15 the communication was his attorney about that
16 claim?

17 A. We had a lot of questions about it.

18 Q. What were those questions?

19 A. That it was an exaggerated claim;
20 there was no justification for it.

21 Q. Do you mean that the contract didn't
22 call for those payments? Is that what you
23 mean by no justification?

24 A. Didn't call for a payment of that
25 amount.

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SHEET 1 PAGE 1

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1 VOLUME II
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE DISTRICT OF DELAWARE

4 - - -
5 ARLIN M. ADAMS, Chapter 11 :
6 Trustee of the :
7 Post-Confirmation Bankruptcy :
8 Estates of CORAM HEALTHCARE :
9 CORPORATION, a Delaware :
10 Corporation and of CORAM, :
11 INC., a Delaware Corporation, :
12 Plaintiff : CASE NO.
13 vs. : 04-1565
14 :
15 DANIEL D. CROWLEY; DONALD J. :
16 AMARAL; WILLIAM J. CASEY; :
17 L. PETER SMITH; AND SANDRA L. :
18 SMOLEY, :
19 Defendants :
20 - - -
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22
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Wednesday, March 28, 2007
9:33 a.m.

Continued videotape deposition
of ARLIN M. ADAMS, held at the law
offices of Schnader Harrison Segal &
Lewis, LLP, 1600 Market Street, Suite
3600, Philadelphia, Pennsylvania, 19103,
pursuant to notice before Cynthia A.
Whyte, Registered Professional Reporter
and Notary Public.

PAGE 3

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1 IT IS HEREBY STIPULATED AND
2 AGREED by and among counsel for the
3 respective parties hereto that the
4 filing, sealing and certification of the
5 within deposition shall be and the same
6 are hereby waived.

7 IT IS FURTHER STIPULATED
8 AND AGREED that all objections,
9 except as to the form of the
10 question, shall be reserved to the
11 time of the trial.

12 IT IS FURTHER STIPULATED AND
13 AGREED that the within deposition may be
14 signed before any Notary Public with the
15 same force and effect as if signed and
16 sworn to before the Court.
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PAGE 2

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1 until I dwelled on them. And then when
 2 Mr. Crowley at the hearing that came a few
 3 days later began trying to explain them, I
 4 realized how discordant his answers were and
 5 that I had been misled.
 6 And I'm not sure that I said that in
 7 sequential form yesterday.
 8 Q. But you testified at deposition on
 9 February 25 of '03 and you reviewed the
 10 documents at the deposition; you were shown
 11 them?
 12 A. I don't recall it, but if you say.
 13 Q. I thought you just said that a
 14 minute ago, that you were first shown those
 15 documents at your deposition.
 16 A. That's right.
 17 Q. And then after the deposition you
 18 had six or so days to review them with your
 19 lawyers, reflect on them, discuss them,
 20 correct?
 21 A. I did say that.
 22 Q. And you did that?
 23 A. And I did that.
 24 Q. And do you know whether your lawyers
 25 prepared Mr. Crowley for his testimony on

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1 review the documents and discuss them with
 2 your lawyers, was there anything preventing
 3 you from asking Mr. Kipnes on prior to March 3
 4 what's Crowley saying about these documents?
 5 MR. BRESSLER: Object to the
 6 form.
 7 You may answer.
 8 A. I think that Mr. Kipnes was quite
 9 surprised and he told me that he was upset.
 10 MR. BRESSLER: Please don't
 11 testify as to what counsel said to you or
 12 you said to counsel.
 13 Q. The question is whether there was
 14 anything preventing you from having Mr. Kipnes
 15 question Crowley and report back to you?
 16 A. Was there anything preventing me?
 17 Q. Yes.
 18 A. Well, I wanted to be very, very
 19 careful about that.
 20 Q. Was there anything preventing you
 21 from questioning Mr. Crowley yourself prior to
 22 March 3 after you had reviewed the documents?
 23 A. After I saw the documents I didn't
 24 think any further discussion with Mr. Crowley
 25 was fruitful.

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1 March 3?
 2 A. I don't know that.
 3 MR. BRESSLER: Object to the
 4 form.
 5 A. I don't know that.
 6 Q. Do you know who called Mr. Crowley
 7 as a witness on March 3?
 8 A. I think we. We had previously
 9 called him as a witness as one of our
 10 executives.
 11 Q. Did you know that Mr. Kipnes met
 12 with Mr. Crowley to prepare him for his
 13 testimony on March 3 prior to March 3?
 14 A. I'm not surprised to hear that. I
 15 don't think I know it, but I'm not surprised
 16 to learn it.
 17 Q. Did you learn from Mr. Kipnes what
 18 it was that Mr. Crowley was saying in
 19 preparation for that hearing?
 20 MR. BRESSLER: Object to the
 21 form and direct him not to answer
 22 anything Mr. Kipnes told him.
 23 A. I don't know, no.
 24 Q. Was there anything preventing you
 25 from asking, having now had the chance to

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1 Q. So you --
 2 A. I had lost complete confidence.
 3 Q. So prior to March 3 you lost
 4 complete confidence in Crowley?
 5 A. I'm not sure of those dates; after
 6 having seen those documents and dwelling on
 7 them, but the real conclusion occurred, in my
 8 mind, after Mr. Crowley tried to explain in
 9 the courtroom five, six days later the import
 10 of those documents. I was completely
 11 convinced that he had deceived me, that his
 12 explanation did not hold water, and, well, I
 13 was pretty discouraged.
 14 Q. You saw those documents and dwelled
 15 on them prior to March 3, right?
 16 MR. BRESSLER: Object to the
 17 form. That's not what he said.
 18 A. Prior to March 3 I can't say. I'm
 19 not sure about the sequence. I don't
 20 believe --
 21 Q. Was there anything preventing you
 22 from withdrawing your motion prior to March 3?
 23 A. Yes, there was.
 24 Q. What was that?
 25 A. I gave that some thought.

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1 We had agreed in writing as part of
2 the settlement with Crowley to use our best
3 efforts to implement the settlement, the
4 proposed settlement. So that I was then in
5 the position that if I withdrew the settlement
6 it would lead to more litigation from Crowley
7 against me as the trustee, and I thought that
8 it was wiser to let the court decide the issue
9 because then Crowley couldn't say, well, you
10 reneged on your agreement. You owe me \$17
11 million or whatever he was talking about.

12 And, fortunately, I was right
13 because what happened is that the court
14 decided that Crowley's explanation was
15 incredible, unbelievable, or whatever the
16 words she used. That relieved me as the
17 trustee of any legal obligation to implement
18 the proposed deal with Crowley.

19 Q. So you went to court on March 3
20 pursuing a motion for approval of the
21 agreement you had entered into with Crowley
22 but secretly hoping that the court would deny
23 that motion?

24 A. Oh, no, no --

25 MR. BRESSLER: Object to the

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1 A. No.
2 Q. So your objective then on March 3 in
3 court was that your application be approved by
4 the court?

5 A. That the court would make the
6 decision. I can't make the decision for the
7 court. And a lot of that decision depends on
8 credibility, and I'm not so sure that I was
9 the proper person to determine credibility,
10 since I was part of the plan that was being
11 submitted to the court.

12 Q. Had your views about Mr. Crowley
13 changed prior to the March 3, 2003 hearing?

14 A. Prior to? No. Up until the time I
15 saw the documents, I was in support of the
16 plan.

17 Q. You just told us you saw the
18 documents on February 25.

19 A. Well, whatever the date was. I made
20 it clear I can't remember the dates. I don't
21 propose to.

22 Q. Fine, but my question is: Assuming
23 you saw the documents for the first time on
24 February 25, looked at them thereafter, talked
25 about them with counsel, had your view of

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1 form of the question. That's not what he
2 said.

3 A. -- no, no, no. You misunderstood
4 what I said. I did not say that.

5 Q. Did you also enter into a written
6 agreement with Mr. Crowley to give him a
7 release from litigation?

8 A. I didn't enter into a written
9 agreement. It was part of the proposal as I
10 recall it, but I'm not sure. Whatever it says
11 it says.

12 Q. And when you went into court on
13 March 3, had you also signed a document by
14 which Mr. Crowley was going to get \$2 million
15 and a release from litigation?

16 MR. BRESSLER: Object to the
17 form, but he can answer.

18 A. Would get it if the plan was
19 approved.

20 Q. And when you went into court on
21 March 3, was it your unexpressed hope that the
22 court would deny your application?

23 A. No.

24 MR. BRESSLER: Object to the
25 form.

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1 Mr. Crowley changed prior to the beginning of
2 that hearing on March 3, 2003?

3 MR. BRESSLER: Object to the
4 form. Asked and answered.

5 A. It didn't change definitively. I
6 said that it was going to depend on his
7 explanation of the documents. He was
8 explaining I guess to Kipnes, I don't know
9 that, his interpretation. He didn't see the
10 documents, et cetera.

11 By the time of the hearing the judge
12 heard under oath and said, in effect,
13 Mr. Crowley, I just don't believe you. When
14 she said that, that reenforced my suspicion
15 that he had not been frank with us.

16 Q. And when did you first form that
17 suspicion?

18 A. When I saw the documents.

19 Q. So you formed that suspicion prior
20 to the March 3 hearing?

21 A. We're going to go through this
22 again.

23 Q. I wasn't asking you about this, sir,
24 but you raised it all on your own. You
25 started telling us what you were thinking

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SHEET 1 PAGE 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ARLIN M. ADAMS, Chapter 11
Trustee of the Post-Confirmation
Bankruptcy Estates of CORAM
HEALTHCARE CORPORATION, a Delaware
Corporation, and of CORAM, INC.,
a Delaware Corporation,

Plaintiff,

vs.

CASE NO. 04-1565

DANIEL D. CROWLEY; DONALD
J. AMARAL; WILLIAM J. CASEY;
L. PETER SMITH; and SANDRA
L. SMOLEY,

Defendants.

---oOo---

VIDEOTAPED DEPOSITION OF DONN TICE

Wednesday, April 4, 2007

---oOo---

SHEILA CHASE & ASSOCIATES
REPORTING FOR:
LiveNote World Service
221 Main Street, Suite 1250
San Francisco, California 94105
Phone: (415) 321-2300
Fax: (415) 321-2301

Reported by:
LORRIE L. MARCHANT, CSR, RPR, CRR, CLR
CSR No. 10523

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BE IT REMEMBERED that on Wednesday, April 4, 2007,
commencing at the hour of 9:07 a.m., thereof, at the
offices of Keker & Van Nest, LLP, 710 Sansome Street,
San Francisco, California, before me, LORRIE L.
MARCHANT, CSR, RPR, CRR, CLR, CRP, a Certified Shorthand
Reporter for the State of California, personally
appeared

DONN TICE,

called as a witness by the Defendants herein, who, being
by me first duly sworn/affirmed, was thereupon examined
and testified as hereinafter set forth.

---oOo---

Appearing as counsel on behalf of Plaintiffs:

RICHARD A. BARKASY, Esquire
SCHNADER HARRISON SEGAL & LEWIS, LLP
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Appearing as counsel on behalf of the Defendants:

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(415) 397-7188 - Fax
e-mail: glynnch@kvn.com

Also present:

James Terrell, CLVS

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Exhibit 2	Letter to Daniel Crowley from Jed Hughes, dated 12/18/2000, Bates-stamped CROWLEYKVN 005794 - CROWLEYKVN 005801, 8 pages	67
Exhibit 3	Letter to Kevin Genda and Warren Feder from Dan Crowley, dated 10/10/2000, Bates-stamped CROWLEYKVN 005750, 1 page	68
Exhibit 4	Letter to Steve Feinberg and Kevin Genda from Dan Crowley, dated 11/6/2000, 4 pages	74
Exhibit 5	Letter to Kevin Genda, Warren Feder and Donn Tice from Daniel Crowley, dated 1/2/2001, 7 pages	77
Exhibit 6	Letter to Kevin Genda from Dan Crowley, dated 10/30/2001, 5 pages	90
Exhibit 7	Letter to Warren Feder and Kevin Genda from Daniel Crowley, dated 9/28/2000, Bates-stamped CROWLEYKVN 005747 - CROWLEYKVN 005749, 3 pages	91

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THE VIDEOGRAPHER: This begins the videotaped
deposition of Donn Tice, Tape 1, Volume I, in the matter
of Arlin M. Adams versus Daniel D. Crowley, et al.,
filed in the United States District Court for the
District of Delaware. Case No. 041565SLR.

Today's date is April 4, 2007. The time on the
video monitor is 9:07. The video operator today is
James Terrell, representing LiveNote World Service,
located at 221 Main Street, Suite 1250, San Francisco,
California 94105. The phone number is (415) 321-2300.

The court reporter today is Lorrie Marchant,
with Sheila Chase & Associates, reporting on behalf of
LiveNote World Service.

Today's deposition is being taken on behalf of
defendant and is taking place at 710 Sansome Street,
San Francisco, California.

If counsels will now please identify yourselves
and whom you represent.

MR. LYNCH: Garrett Lynch, from Keker & Van
Nest, on behalf of the defendant, Daniel Crowley.

MR. BARKASY: Rich Barkasy, from the law firm
of Schnader, Harrison, Segal & Lewis, for Arlin M.
Adams, the Chapter 11 trustee of Coram Healthcare
Corporation and Coram, Inc.

THE VIDEOGRAPHER: Thank you.

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1 emerging nature of the company's performance. And the
2 decision was made to wait in the hopes of potentially
3 higher earnings performance.

4 And this was in probably late '99. And
5 everybody knows what happens -- what happened to the
6 equity markets in the spring of 2000. You know, the
7 public equity markets essentially crashed and took years
8 to come back and are still really just coming back.

9 So in some way, our -- our -- and then for
10 reasons that we'll get into later, Winterland's own
11 performance turned. And so whether or not, in
12 hindsight, it would have been a good thing or a bad
13 thing to have taken the company public is a matter of
14 legitimate debate.

15 The point isn't really so much to assess
16 whether it was a good idea or a bad idea, but rather
17 that, you know, Dan took a stand on behalf of the
18 company that, you know, wasn't necessarily popular or in
19 the interest of the investors, per se, or, you know,
20 sort of siding with the investor's interest. He was
21 trying to do what was right for the health and interest
22 of the company in an objective way.

23 Q. Who was on the board of directors at this time?

24 A. So there was four people: Kevin Genda, the
25 representative of Cerberus; Warren Feder, the

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1 his role, than sort of chairman of the board. He was
2 really executive chairman.

3 Q. And when you say "executive chairman" as a more
4 descriptive term, is it fair to say because he was so --
5 because he was involved in the daily operation of the
6 business or do you mean --

7 A. Yeah. I'm just really trying to characterize
8 the level of active involvement.

9 Whereas, a typical sort of chairman of the
10 board might be really involved more in the governance of
11 the business and the management of board affairs and
12 business strategy, Dan was really much more involved in
13 not just those matters, but the day-to-day execution and
14 management of the business.

15 Q. You mentioned there were efforts to raise
16 equity capital for the business and another business
17 strategy was to secure new licenses; correct?

18 A. Yes.

19 Q. Did there also come a time when Winterland
20 explored the possibility of selling the business or
21 merging the business?

22 A. Yeah. As the business was able to stand and --
23 and -- on its own two feet and produce really strong
24 performance, we began to explore two possibilities. I
25 mean, really, we were pursuing almost any merger or

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1 representative of -- I think by then Stepping Stone
2 Capital --

3 Q. Formerly Gordon Brothers?

4 A. Formerly Gordon Brothers.

5 -- Dan, the chairman of the board; and myself,
6 the CEO.

7 Q. And how was it that Dan Crowley became the
8 chairman of the board of Winterland?

9 A. Relatively soon after his involvement, and I
10 really don't remember the exact dates, the -- it was
11 very, very clear that -- that he was an incredibly
12 capable operating executive, that -- that he was adding
13 significant value to Winterland.

14 You know, we were really grateful for his
15 team's involvement and his involvement. You know, all
16 the sort of stereotypical, you know, fears and concerns
17 that incumbent management teams have about third parties
18 getting involved, you know, did not bear out in this
19 case at all.

20 And, you know, the bottom line is that, you
21 know, Dan, because of his proximity to the business, his
22 operating experience and -- and his ability and
23 capacity, was chosen by the investors to play a more
24 active -- really executive chairman would be a more
25 active and descriptive, you know, way of characterizing

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1 acquisition candidate that we could.

2 So either Dan or I or Dan and I together opened
3 up channels to virtually everyone in the industry at the
4 highest levels. So the -- you know, there were three or
5 four principal players.

6 The two largest were Signatures, who was at
7 this time was owned by CMGI, a big Internet
8 consolidation or holding company. Signatures was run by
9 the management that had originally run Winterland. So
10 there was a lot of overlap. They were based in the San
11 Francisco Bay area.

12 There was also a company called Giant, which
13 was owned by Time Warner. And in both of these cases,
14 Dan was intimately -- not just intimately involved, but
15 really the spearhead of those discussions.

16 So in the case of Signatures and CMGI, we
17 actually had -- Dan actually led some discussions that
18 resulted in sort of a draft term sheet of how our
19 businesses might be combined.

20 And in the case of Time Warner, we ended up
21 with some extremely high-level meetings, you know, at --
22 you know, at Rockefeller Center in New York with the
23 Time Warner senior executives, exploring the possibility
24 of a combination.

25 The idea being that if we could combine our

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1 Did Mr. Crowley tell you that the bankruptcy
2 court in Delaware had rejected Coram's first plan of
3 reorganization, finding that the plan was not proposed
4 in good faith because of Mr. Crowley's relationship with
5 Cerberus on December 11, 2000?

6 MR. LYNCH: Objection to form.

7 THE WITNESS: What I can say, just in simple
8 terms, is that while Dan and I covered a lot of things,
9 we didn't talk very much about Coram. So that just
10 wouldn't have been a topic that we necessarily would
11 have gotten into. Certainly at that level of depth.
12 So ...

13 THE VIDEOGRAPHER: When he's done with his
14 answer, we should go off record and change the tape.
15 When you're done with your answer, though.

16 BY MR. BARKASY: Q. Are you done with your
17 answer?

18 A. So, you know, in summary, if any conversation
19 that we may have had would have been in a -- in a much
20 more general kind of context. That just isn't the kind
21 of -- we mainly talked about Winterland.

22 THE VIDEOGRAPHER: This marks the end of Tape 1
23 in Volume I in the deposition of Donn Tice at 11:15.
24 Going off the record.

25 (Recess taken, from 11:15 to 11:19.)

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1 acquire licenses or develop the licenses it had. And it
2 was essentially in a sort of liquidation mode. So,
3 consequently, apart from the declines in its strong
4 underlying licenses, it -- it had no sort of new sources
5 of revenue coming in the door.

6 BY MR. BARKASY: Q. During this time, in 2000
7 and 2001, when the revenue dropped and the EBITDA went
8 with it, Mr. Crowley was the chairman; correct?

9 A. Um, yes.

10 Q. And you were reporting to him; correct?

11 A. Yes. I was the CEO.

12 Q. And he was involved on a day-to-day basis in
13 the management of the business; is that correct?

14 A. Yes. And as in a situation like this, we were
15 doing everything we could to deal with external
16 circumstances. And we actually produced a profit
17 turnaround that's described here in this exhibit,
18 despite a two-thirds reduction this revenue and no
19 capital to operate with. And a second complete massive
20 restructuring.

21 (Marked for identification purposes,
22 Exhibit 7.)

23 BY MR. BARKASY: Q. Mr. Tice, Exhibit Tice 7
24 is a copy of a letter from Mr. Crowley to Mr. Feder and
25 Mr. Genda dated September 28, 2000.

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1 THE VIDEOGRAPHER: On record at 11:19. This
2 marks the beginning of Tape 2 in Volume I of the
3 deposition of Donn Tice.

4 (Marked for identification purposes,
5 Exhibit 6.)

6 BY MR. BARKASY: Q. Mr. Tice, Exhibit Tice 6
7 is a copy of a letter from Mr. Crowley to Mr. Genda and
8 Mr. Feinberg dated October 30, 2001.

9 In the -- in the third paragraph, Mr. Crowley
10 writes: Winterland's revenue hit an air pocket and
11 dropped from \$96,019,000 in 2000 to what looks like
12 approximately 35- -- 34 to 35 million in 2001. EBITDA
13 went with it.

14 Do you see that?

15 A. M-hm.

16 Q. Is that -- is that an accurate statement of
17 what happened to Winterland's revenue and EBITDA in 2000
18 and 2001?

19 MR. LYNCH: Objection to form.

20 THE WITNESS: I think the numbers are accurate.
21 I think the characterization would need to be added to
22 by saying that after the company filed for Chapter 11,
23 it wasn't signing any new licenses. And consequently it
24 wasn't able to renew its revenue base.

25 And it was really hindered in its ability to

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92

1 And I want to draw your attention to the last
2 paragraph on the first page in which Mr. Crowley writes:
3 Winterland has had a, quote, tough, end quote, first
4 half.

5 Do you see that?

6 A. M-hm.

7 Q. Do you agree that Winterland had a tough first
8 half --

9 A. Yes.

10 Q. -- in 2000?

11 A. Yes.

12 Q. And was Mr. Crowley chairman at that time?

13 A. Yes.

14 Q. And you reported to him; correct?

15 A. Yes.

16 Q. And he was involved on a day-to-day basis with
17 the management of the company throughout 2000; is that
18 correct?

19 A. Yes. And we had the external factors that I
20 described earlier about The Backstreet Boys and Pokémon
21 that no one in the management or ownership of the
22 company could have had any control over.

23 Q. Have you ever met Steve Feinberg?

24 A. Yes.

25 Q. In -- in -- in what capacity did you meet

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Case No. 04-1565

VIDEO DEPOSITION OF ALLEN J. MARABITO
April 5, 2007

ARLIN M. ADAMS, Chapter 11 Trustee of the
Post-Confirmation Bankruptcy of Estates of Coram
HEALTHCARE CORPORATION, and of CORAM, INC., a
Delaware corporation,
Plaintiffs,
vs.
DANIEL D. CROWLEY, DONALD J. AMARAL, WILLIAM J.
CASEY, L. PETER SMITH, and SANDRA L. SMOLEY,
Defendants.

APPEARANCES:

SCHNADER HARRISON SEGAL & LEWIS, LLP
By Barry E. Bressler, Esq.
1600 Market Street, Suite 3600
Philadelphia, Pennsylvania 19103-7286
215-751-2050
bbressler@schnader.com
Appearing on behalf of Plaintiffs.

KEKER & VAN NEST, LLP
By Laurie Carr Mims, Esq.
710 Sansome Street
San Francisco, California 94111-1704
415-391-5400
lmims@kvn.com
Appearing on behalf of Defendant
Daniel D. Crowley.
Also Present: Carie Finegan, Videographer

Page 2

Pursuant to Notice and the Federal Rules
of Civil Procedure, the video deposition of ALLEN J.
MARABITO, called by Defendant Daniel D. Crowley, was
taken on Thursday, April 5, 2007, commencing at
10:04 a.m., at 410 17th Street, Denver, Colorado,
before Vanessa D. Campbell, Registered Professional
Reporter and Notary Public within and for the State
of Colorado.

I N D E X

VIDEO DEPOSITION OF ALLEN J. MARABITO

EXAMINATION BY:	PAGE
Mr. Bressler	151, 215
Ms. Mims	5, 205

EXHIBIT NAME	DESCRIPTION	PAGE #
Exhibit 1	Notice of Third-Party Subpoena to Allen Marabito	15
Exhibit 2	Letter to R. James Slaughter from Michael J. Barrie, 3/29/07, PHDATA 1431832_1 and PHDATA 1430744_1	17
Exhibit 3	Letter to Don Amaral from Daniel D. Crowley, CROWLEY 0075 - 0076	46
Exhibit 4	Employment agreement, MARABITO 0036 - 0046	56

Page 3

Exhibit 5	I N D E X (Continued) Letter to Michael Kahn and Coram Board of Directors from John M. Elliott, 12/7/99, with attachments, CROWLEYKVN 004139 - 004156	66
Exhibit 6	Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code, with attachments	84
Exhibit 7	Letter to Coram Board of Directors from Daniel D. Crowley, 4/20/00, with attachments, CROWLEY KVN 014103 - 014108	97
Exhibit 8	Memorandum to various parties from Shaunna Stribling, 2/11/00, with attachments, COR-EQTY0002727 - 0002796	103
Exhibit 9	Facsimile transmission sheet to various parties from Carole Hedrick/David Schwab, 2/9/01, CROWLEYKVN 013824 - 013849	119
Exhibit 10	Update of Coram Healthcare and Management Initiatives, Daniel D. Crowley, 1/9/03, CH-11 TRUSTEE/ CrowleyAdmin006198 - 006244	125
Exhibit 11	Transcript of the pretrial examination of Allen Marabito, 11/7/03	128
Exhibit 12	Letter to Barry E. Bressler from Allen J. Marabito, 4/22/02, with attachments, CH-11 TRUSTEE/ CrowleyAdmin005719 - 005811 and CXR 003348	135
Exhibit 13	10-K form for fiscal year ending 12/31/00	207

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P R O C E E D I N G S

THE VIDEOGRAPHER: Here begins the
videotape deposition of Allen Marabito, Tape 1,
Volume I in the matter of Arlin M. Adams, Chapter
versus Daniel D. Crowley, et al., in the United
States District Court for the District of Delaware,
Case No. 04-1565 (SLR).

Today's date is April 5th, 2007 and the
time on the video monitor is 10:04 a.m. The video
operator today is Carie Finegan, representing
LiveNote World Service, located at 221 Main Street,
Suite 1250, San Francisco, California, 94105, phone
number (415)321-2300.

The court reporter is Vanessa Campbell of
Agren Blando Court Reporting, reporting on behalf of
LiveNote World Service.

Today's deposition is being taken on
behalf of the defendant and is taking place at 410
17th Street, Suite 2200, Denver, Colorado.

Will counsel please introduce yourselves
and state whom you represent.

MS. MIMS: Laurie Mims for defendant
Daniel Crowley.

MR. BRESSLER: Barry Bressler from
Schnader Harrison Segal & Lewis for plaintiff Arlin

Page 153	Page 154
<p>1 you said near the end of your testimony that you</p> <p>2 believed in hindsight it was an error to pay the</p> <p>3 note holders roughly \$6.8 million on the eve of</p> <p>4 bankruptcy?</p> <p>5 MS. MIMS: Object to form.</p> <p>6 A Yes.</p> <p>7 Q (By Mr. Bressler) And you talked about if</p> <p>8 someone were given bankruptcy rules, that would be</p> <p>9 pretty high on the list of things not to do.</p> <p>10 A I think so.</p> <p>11 Q Do you recall that the bankruptcy judge</p> <p>12 also commented on that payment in refusing to</p> <p>13 confirm the first plan?</p> <p>14 MS. MIMS: Objection.</p> <p>15 A I believe you're correct.</p> <p>16 Q (By Mr. Bressler) In your view and from</p> <p>17 your recollection, what was the reason the first</p> <p>18 plan of reorganization was not confirmed?</p> <p>19 MS. MIMS: Objection.</p> <p>20 Q (By Mr. Bressler) I'll rephrase it. Do</p> <p>21 you know the reason the first plan of reorganization</p> <p>22 was not confirmed?</p> <p>23 A I believe I know what the ruling said were</p> <p>24 the reasons.</p> <p>25 Q And what's your understanding?</p>	<p>1 A The reasons were that there was an actual</p> <p>2 conflict of interest, that the conflict of interest</p> <p>3 stemmed from an employment relationship with</p> <p>4 Cerberus, and that relationship being in conflict</p> <p>5 tainted the restructuring process and the judge did</p> <p>6 not believe that she could confirm with that</p> <p>7 ambiguity or taint on the record.</p> <p>8 Q Who had that conflict of interest?</p> <p>9 MS. MIMS: Objection.</p> <p>10 A I think, again, from the ruling, from what</p> <p>11 I recall from the ruling, the judge said Mr. Crowley</p> <p>12 had a conflict of interest.</p> <p>13 Q (By Mr. Bressler) And you just referred</p> <p>14 to an employment relationship with Cerberus. Whose</p> <p>15 employment relationship were you referring to?</p> <p>16 MS. MIMS: Objection to the extent that</p> <p>17 it -- it's calling for him to characterize a</p> <p>18 document.</p> <p>19 MR. BRESSLER: I'm not asking him to</p> <p>20 characterize a document. His answer was an</p> <p>21 employment relationship with Cerberus. I'm asking</p> <p>22 him to explain his answer.</p> <p>23 A I think specifically it was receiving a</p> <p>24 salary from Cerberus.</p> <p>25 Q (By Mr. Bressler) When's the first time</p>
Page 155	Page 156
<p>1 you saw Mr. Crowley's written employment agreement</p> <p>2 with Cerberus?</p> <p>3 A I actually saw it was subsequent to the</p> <p>4 hearing when we were preparing for another 10-K.</p> <p>5 Q Subsequent to the first confirmation</p> <p>6 hearing?</p> <p>7 A Yes.</p> <p>8 Q When's the first time you learned of it?</p> <p>9 A At the -- at the hearing.</p> <p>10 Q Mr. Crowley never showed it to you before</p> <p>11 the first confirmation hearing?</p> <p>12 A No.</p> <p>13 Q Do you know if Mr. Crowley ever showed the</p> <p>14 employment agreement with Cerberus to Mr. Friedman</p> <p>15 before discovery in connection with the first</p> <p>16 confirmation hearing?</p> <p>17 A I do not know.</p> <p>18 Q Do you think having an actual conflict of</p> <p>19 interest, in Ms. Mims' words, harmed Coram?</p> <p>20 MS. MIMS: Objection.</p> <p>21 A I think it prolonged Coram's bankruptcy.</p> <p>22 Q (By Mr. Bressler) From December of 2000</p> <p>23 until November of 2004?</p> <p>24 A You're telling me those -- those were the,</p> <p>25 you know, beginning and ending dates of that portion</p>	<p>1 of the proceeding, then I'll take your</p> <p>2 representation.</p> <p>3 Q Okay. The first confirmation hearing was</p> <p>4 in the fall or winter of 2000; is that correct?</p> <p>5 A Yes.</p> <p>6 Q And --</p> <p>7 A To clarify, what I'm -- you know, you want</p> <p>8 to use the term harm, others have wanted to use it.</p> <p>9 The confirmation was denied. After the confirmation</p> <p>10 was denied, you had to take additional steps to</p> <p>11 obtain the release of Coram from bankruptcy. I -- I</p> <p>12 don't think there was another way out. Once the</p> <p>13 company became a debtor in possession subject to the</p> <p>14 jurisdiction of the bankruptcy court, we were in it</p> <p>15 until the court said we were confirmed.</p> <p>16 Q Who was the chairman of the board and the</p> <p>17 CEO when Coram filed bankruptcy?</p> <p>18 A It would be Mr. Crowley.</p> <p>19 Q And Mr. Crowley recommended to the board</p> <p>20 that a Chapter 11 be filed?</p> <p>21 A I think Mr. Crowley, like other officers</p> <p>22 or chairmen or directors, they followed advice,</p> <p>23 which becomes recommendations, but it is predicated</p> <p>24 on all of the steps and the information that goes</p> <p>25 into reaching a conclusion or a recommendation.</p>

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SHEET 1 PAGE 1

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF DELAWARE

3

4 ARLIN M. ADAMS, Chapter 11
Trustee of the Post-Confirmation
5 Bankruptcy Estates of CORAM
HEALTHCARE CORPORATION, a Delaware
6 Corporation, and of CORAM, INC.,
a Delaware Corporation,

7 Plaintiff,

8 vs. CASE NO. 04-1565

9 DANIEL D. CROWLEY; DONALD
10 J. AMARAL; WILLIAM J. CASEY;
11 L. PETER SMITH; and SANDRA
L. SMOLEY,

12 Defendants.

13

14 ---oOo---

15 VIDEOTAPED DEPOSITION OF DANIEL D. CROWLEY

16 Friday, April 6, 2007

17 ---oOo---

18 SHEILA CHASE & ASSOCIATES
REPORTING FOR:
19 LiveNote World Service
221 Main Street, Suite 1250
20 San Francisco, California 94105
Phone: (415) 321-2300
21 Fax: (415) 321-2301

22

23

24 Reported by:
LORRIE L. MARCHANT, CSR, RPR, CRR, CLR
25 CSR No. 10523

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1 INDEX OF EXHIBITS (Continued)

2 DESCRIPTION PAGE

3 Exhibit 8 Letter to Stephen Feinberg from 61
Daniel Crowley, dated 6/28/1999, 2
4 pages

5 Exhibit 9 e-mail to Pam from Ron Mills, 65
dated 1/18/2000, subject: Jeff
6 Turner, Bates-stamped CROWLEYKVN
004766, 1 page

7

8 Exhibit 10 Letter to Steve Feinberg from Dan 78
Crowley, dated 9/30/1999,
Bates-stamped CROWLEYKVN 018962 -
9 CROWLEYKVN 018968, 7 pages

10 Exhibit 11 Document entitled "Consultant 88
Agreement," with handwritten notes,
Bates-stamped CROWLEYKVN 018750 -
11 CROWLEYKVN 018765, 16 pages

12

13 Exhibit 12 Letter to Julia Kopta from Daniel 90
Crowley, dated 9/23/1999,
Bates-stamped CROWLEYKVN 018957 -
14 CROWLEYKVN 018961, 5 pages

15 Exhibit 13 Letter to Mark Neporent from 91
Pamela Gridley Herrera, dated
11/19/1999, Bates-stamped CERB
16 01350 - CERB 01369, 20 pages

17

18 Exhibit 14 Memorandum to Daniel Crowley, 95
cc'd to Steve Feinberg, from Mark
Neporent, dated 11/2/1999, subject:
19 Employment Agreement, Bates-stamped
CROWLEYKVN 018111 - CROWLEYKVN
20 018129, 19 pages

21 Exhibit 15 Letter to Mark Neporent from 105
Daniel Crowley, dated 11/3/1999,
Bates-stamped CROWLEYKVN 018988 -
22 CROWLEYKVN 018994, 7 pages

23

24 Exhibit 16 Letter to Steve Feinberg from Dan 111
Crowley, dated 11/16/1999, 10 pages

25

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1 I N D E X

2 INDEX OF EXAMINATION

3

4 MR. BARKASY PAGE 9

5 ---oOo---

6 INDEX OF EXHIBITS

7 DESCRIPTION PAGE

8 Exhibit 1 Letter to Stephen Feinberg from 21
Daniel Crowley, dated 4/9/1999, 1
9 page

10 Exhibit 2 Document entitled "Incentive 25
Agreement," 7 pages

11

12 Exhibit 3 Disclosure Statement Pursuant to 28
Section 1125 of the Bankruptcy
Code, 152 pages

13

14 Exhibit 4 Memo to Donn Tice, K. Genda, W. 40
Feder and S. Feinberg from Dan
Crowley, dated 11/24/1999, subject:
15 Winterland, 2 pages

16 Exhibit 5 Letter to Kevin Genda, Warren 50
Feder and Donn Tice from Daniel
Crowley, dated 1/2/2001, and
17 attachment of Corporate Resolution
of Winterland Concessions Company,
18 7 pages

19 Exhibit 6 Letter to Steve Feinberg, Warren 53
Feder and Steven Wincott from
Daniel Crowley, dated 2/15/2001,
20 and attached initial offer from
Signatures Network, 8 pages

21

22 Exhibit 7 Faxed memo to Steve Feinberg, 55
Kevin Genda and Warren Feder from
Daniel Crowley, dated 12/6/2001, 3
23 pages

24

25

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1 INDEX OF EXHIBITS (Continued)

2 DESCRIPTION PAGE

3 Exhibit 17 Letter to Don Amaral from Daniel 114
Crowley, dated 11/18/1999,
Bates-stamped COR.EQTY0000382 -
4 COR.EQTY0000392, 11 pages

5

6 Exhibit 18 Letter to Steven Feinberg from 119
Daniel Crowley, dated 11/12/1999,
Bates-stamped CERB 01347 - CERB
7 01348, 2 pages

8 Exhibit 19 Copy of transcript of the 129
proceedings before Judge Walrath on
December 15, 2000, 135 pages

9

10 Exhibit 20 Copy of a transcript of 132
proceedings before the Honorable
Mary F. Walrath in the United
11 States Bankruptcy Court for the
District of Delaware on December
12 13, 2001, 95 pages

13

14 Exhibit 21 Copy of Exhibit 99.2 to an 8-K 135
filed by Coram with the Securities
and Exchange Commission, 3 pages

15

16 Exhibit 22 Letter to Don Amaral from Daniel 138
Crowley, dated 11/19/1999,
Bates-stamped CROWLEYKVN 000074 -
17 CROWLEYKVN 000077, 4 pages

18 Exhibit 23 Various documents Bates-stamped 142
CROWLEYKVN 019168 - CROWLEYKVN
019182, 15 pages

19

20 Exhibit 24 Copy of the transcript of the 148
proceedings before the Honorable
Mary F. Walrath on December 1, 2000
21 in the Coram bankruptcy matter, 96
pages

22

23 Exhibit 25 Request of Daniel Crowley for 150
Payment of Administrative Expense,
30 pages

24

25

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SHEET 8 PAGE 29

29

1 Q. And it says in the second sentence a DIP
2 facility with Madeleine, LLC, as lender and agent for
3 lenders; Coram as borrower.
4 Do you see that?
5 A. Yes, I see it.
6 Q. Does reviewing page 15 of the disclosure
7 statement refresh your recollection as to who Coram's
8 DIP lender was?
9 MR. PETERS: I'm going to object to the form.
10 THE WITNESS: No, it doesn't refresh my memory.
11 The only memory I'd have about the debtor-in-possession
12 facility was the firm never drew on it and never took
13 any money from it. That's my recollection.
14 BY MR. BARKASY: Q. All right. Mr. Crowley,
15 if you could turn back to Exhibit 2, which is the
16 incentive agreement.
17 A. I have it.
18 Q. Exhibit 2, the incentive agreement, provided
19 for you to be compensated by receiving 20 percent of the
20 upside in Winterland; is that correct?
21 A. Do you want me to take the time to read the
22 document?
23 Q. Yeah. I do.
24 A. Okay. Where -- where would you like me to be
25 looking?

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31

1 recall. But I think generally it's consistent with it.
2 Q. What did you -- I'm going to withdraw that.
3 What -- what services did you provide
4 Winterland for Cerberus?
5 A. Are we done with this document (indicating)?
6 Q. Yes.
7 A. Okay. Winterland was a firm started by
8 Bill Graham, in the old rock-and-roll era, to fund what
9 they called artists' and musicians' and bands' and
10 singers' tours, by selling merchandise around the tour,
11 T-shirts and lunchpails and calendars and posters and
12 peripheral items that kids and attendees to these
13 concerts might like.
14 And so a company -- not unlike the publishing
15 industry, which publishes a book and advances the author
16 some funding against the potential proceeds of the sale
17 of the book or, in this case, the merchandise, and that
18 provides financing for the artist to go on tour.
19 And Winterland, that name, is a merchandising
20 company. Donn Tice, T-I-C-E, was the CEO who ran the
21 company, and his financial reporting had been
22 disappointing to the owners of Winterland in that he
23 would promise it would do one thing and then it wouldn't
24 and was constantly calling for cash and investment --
25 more investment in the company and taking up additional

PAGE 30

30

1 Q. At any portion of the document that you feel
2 you need to review to answer my question. I don't want
3 to limit you in any way.
4 A. Thank you.
5 Okay.
6 Q. Can you answer my question?
7 A. Can you ask it again, please.
8 Q. Certainly.
9 Exhibit 2, the incentive agreement, provided
10 for you to be compensated by receiving 20 percent of the
11 upside in Winterland; is that correct?
12 MR. PETERS: Objection to the form.
13 THE WITNESS: I think it provides for an
14 opportunity to earn up to -- an incentive, rather, equal
15 to 20 percent of the fair market value after a
16 subtraction of various expenses and indebtedness and
17 costs to get to the net equity.
18 And if there was gain on the net equity after
19 payment of all these costs and expenses and repayment of
20 debt, that I would participate by getting 20 percent of
21 the return.
22 BY MR. BARKASY: Q. Is that essentially what
23 you were asking for in Exhibit 1, your April 9 letter to
24 Mr. Feinberg?
25 A. As I sit here today, it's difficult for me to

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32

1 debt.
2 And Cerberus -- excuse me -- and Gordon
3 Brothers and -- I just think there's someone else I
4 can't recall -- were concerned that the entity was
5 adrift and wasn't succeeding and that there was a
6 terrific opportunity and that Tice could use and could
7 benefit by a CEO coach of sorts.
8 And so I was cast to be available to him and to
9 oversee and look over his shoulder and to help him.
10 And that -- that wasn't clear when we started
11 what that meant. But I found myself involved in depth
12 with Winterland.
13 And they had a problem with the mix in that
14 they were using equipment that they bought to print
15 silkscreen, multiple colors and multiple screens, shirts
16 and such for private label.
17 So something like North Face or Ralph Lauren
18 Polo would have Winterland bid on and take orders for,
19 you know, millions of dollars worth of apparel that they
20 would screen on the image that these entities wanted,
21 and inadvertently the company took it below cost and was
22 losing money on it, and it constituted a large portion
23 of the Winterland business.
24 Winterland was in a number of contracts with
25 musical artists in which it advanced monies and

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SHEET 34 PAGE 133

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1 MR. SLAUGHTER: Rich, is this a deposition or
 2 is this the -- the hearing?
 3 MR. BARKASY: It's -- it's -- it says on the
 4 first page --
 5 MR. SLAUGHTER: Hearing. Sorry. Got it.
 6 BY MR. BARKASY: Q. You --
 7 MR. SLAUGHTER: I'm sorry. And there's writing
 8 on various pages. I don't know if --
 9 MR. BARKASY: Yeah. Unfortunately, that's the
 10 only copy of this we've ever been provided --
 11 MR. SLAUGHTER: Fair enough.
 12 MR. BARKASY: -- in the trustee's office I
 13 believe, so --
 14 MR. SLAUGHTER: Okay. I just wanted to make
 15 sure that you knew it so in case they were your notes or
 16 something like that.
 17 MR. BARKASY: I think they preceded us.
 18 MR. SLAUGHTER: Fair enough.
 19 BY MR. BARKASY: Q. You testified in the
 20 confirmation hearing on Coram's second proposed plan of
 21 reorganization on December 13, 2001; didn't you?
 22 A. Yes, I testified.
 23 Q. Okay. Please turn to page 425 of the
 24 transcript.
 25 A. (Witness complies.)

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1 MR. SLAUGHTER: Objection to the form of the
 2 question. Calls for speculation. Lacks foundation.
 3 THE WITNESS: Do you have the press release?
 4 (Marked for identification purposes,
 5 Exhibit 21.)
 6 BY MR. BARKASY: Q. Mr. Crowley, Exhibit
 7 Crowley 21 is a copy of Exhibit 99.2 to an 8-K filed by
 8 Coram with the Securities and Exchange Commission. And
 9 it is a press release dated November 30, 1999.
 10 Did you approve this press release before it
 11 was issued?
 12 A. I think counsel approved it. And the board
 13 approved it.
 14 Q. Did you read it?
 15 A. I'm sure I read it, and I'm sure it had
 16 multiple drafts. It went through various people in my
 17 practice when I ran Foundation and Health Net, to run
 18 these kind of things through regulatory counsel. And
 19 that's what would have happened here.
 20 And you're not showing me it, but I do believe
 21 there were a number of drafts before this that had been
 22 scrubbed by counsel.
 23 Q. Did -- did Kurt Davis, of Dynamic, prepare the
 24 original draft of this document?
 25 A. He may have. I'm not certain.

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1 Q. Were you asked these questions and did you give
 2 these answers when you testified at the confirmation
 3 hearing before Judge Walrath on December 13th, 2001:
 4 Question: Let's get some timing on that.
 5 MR. SLAUGHTER: What line are you --
 6 MR. BARKASY: Line -- page 425, line 9,
 7 continuing to 425, line 16.
 8 BY MR. BARKASY: Q. Question: Let's get some
 9 timing on that. You first said the board approved your
 10 employment agreement. That would have been back in
 11 November of 1999?
 12 Answer: Approximately.
 13 Question: At that time the board did not know
 14 that you were receiving \$80,000 a month from Cerberus;
 15 is that correct?
 16 Answer: That is correct.
 17 Were you asked those questions and did you give
 18 your -- those answers in your testimony before Judge
 19 Walrath?
 20 A. That's what the transcript says.
 21 Q. Coram issued a press release announcing your
 22 becoming Coram's CEO; correct?
 23 A. I think it did.
 24 Q. And there was no mention in the press release
 25 of your contract with Cerberus, was there?

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1 Q. Okay. But you read this before it was issued,
 2 didn't you, Mr. Crowley?
 3 A. Well, again, I -- I'm saying that this would
 4 have been drafted; I would have been shown it. It would
 5 have gone through the various approval processes that
 6 included -- I think at that time it was probably Reed
 7 Smith -- I can't remember the name of the fellow there;
 8 it's an odd name -- who would have written all over this
 9 and changed it.
 10 It had a review by Don Amaral, because his name
 11 is in there. And it would have been things that may
 12 have been included that didn't end up in here.
 13 Certainly Winterland is in -- embedded in the
 14 first part of the document.
 15 But did I approve it? I approved it after
 16 everybody else approved it.
 17 Q. Did you tell any lawyers at Reed Smith as of
 18 November 30, 1999, that you had a contract with Cerberus
 19 under which you were being paid the sum of \$80,000 per
 20 month?
 21 A. I don't recall doing that.
 22 Q. Did you tell Scott Larson, the general counsel
 23 of Coram, that you had a contract with Cerberus that
 24 paid you \$80,000 a month as of the date of this press
 25 release, November 30, 1999?

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SHEET 35 PAGE 137

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1 MR. SLAUGHTER: Objection. Vague and
2 ambiguous.
3 THE WITNESS: I need to tell you, that rocking
4 back and forth is distracting me.
5 BY MR. BARKASY: Q. I'm sorry. Nervous habit.
6 A. Okay. But I don't -- I don't know that I did
7 or didn't. I don't recall it.
8 Q. Did you -- is there any mention in this press
9 release, Crowley 21, of your contract with Cerberus?
10 MR. SLAUGHTER: Objection. The document speaks
11 for itself.
12 BY MR. BARKASY: Q. You can answer.
13 A. Only to the extent that it calls out chairman
14 of the board of Winterland.
15 Q. All right. The word "Cerberus" doesn't appear
16 in here, does it?
17 A. No, it doesn't.
18 Q. No 80,000 a month; right?
19 A. It doesn't appear in there.
20 MR. SLAUGHTER: Objection. Argumentative.
21 MR. PETERS: You don't have a better copy of
22 this? Mine's only half. I'm only getting part -- it
23 looks like I'm only getting part of the page, but we'll
24 see what the questions are.
25 MR. BARRIE: It looks -- but it looks like

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1 options price at the close of the market on the 30th, I
2 am stipulating that no public press release be made
3 until after the close of the market.
4 Correct?
5 A. That's what it says there.
6 Q. Why was it important to you that no public
7 press release be made until November 30th?
8 A. I don't think the contract took effect until
9 November 30th. I wasn't an employee or the chairman or
10 the CEO or working for Coram until November 30th, and it
11 seemed to me to be jumping by announcing something
12 before the actual event.
13 Q. Were you at all concerned about the price of
14 your options?
15 A. I don't think that I was thinking about the
16 price of the options, per se. Although that is the date
17 that it would be priced, so much as, you know, my
18 experience is things happen between the 19th of November
19 and the 30th of November. And I didn't work there. So
20 he would be announcing something? I don't know.
21 Q. Well, didn't you mean to be telling Mr. Amaral
22 that you were worried that if your contract was
23 announced to the public on November 19, that the stock
24 price would go up and that you would have to pay more to
25 exercise your options because the price for your options

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1 they're complete.
2 MR. BARKASY: We need to get another copy of
3 this.
4 MR. SLAUGHTER: Do you want to do this later?
5 MR. BARKASY: Yeah. Can we get a copy on a
6 break, Jamie?
7 MR. SLAUGHTER: Sure.
8 MR. BARKASY: Thank you.
9 MR. SLAUGHTER: Do you want to do that now or
10 do you want to keep going?
11 MR. BARKASY: We might as well keep going until
12 we hit a natural break.
13 MR. BARRIE: So is this going to be Crowley 22?
14 THE REPORTER: Yes.
15 (Marked for identification purposes,
16 Exhibit 22.)
17 BY MR. BARKASY: Q. Mr. Crowley, you've been
18 handed Exhibit Crowley 22.
19 Is it a copy of a letter from you to
20 Don Amaral?
21 A. Yes. This is a letter from myself to
22 Don Amaral.
23 Q. You wrote in the third paragraph on the -- on
24 the first page, inasmuch as the contract does not take
25 effect until 30 November 1999, and importantly to me, my

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1 would be fixed as of November 30?
2 MR. SLAUGHTER: Object to the form of the
3 question.
4 BY MR. BARKASY: Q. You can answer.
5 A. Well, Rich, it's -- this -- my contract didn't
6 take effect until the 30th of November. This thing was
7 reviewed by Don Amaral. It was reviewed by counsel.
8 And ultimately, you know, I am saying if I don't work
9 there, I don't -- I don't want you to announce me until
10 I work there.
11 So you can draw whatever conclusion you wish
12 from that, but I wasn't an employee.
13 Q. What thing was reviewed by counsel?
14 A. This press release was.
15 Q. Okay. But not your letter to Mr. Amaral;
16 right?
17 A. This press release was. My contract was dated
18 the 30th.
19 Q. When you became Coram's CEO, did Dynamic
20 Healthcare provide consulting services to Coram?
21 MR. SLAUGHTER: Object to the form.
22 THE WITNESS: Ultimately, I believe it did.
23 BY MR. BARKASY: Q. Who from Dynamic provided
24 consulting services to Coram?
25 A. If you have a list you could refresh my memory,

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1 are in people who haven't been paying as much attention.
 2 BY MR. BARKASY: Q. Do you recall asking any
 3 Coram executives who did not reside in the Denver area
 4 to move to Denver after you became Coram's chief
 5 executive officer?

6 A. Well, the one that comes to mind -- his name
 7 escapes me. It is a man that was responsible for
 8 contracts and maybe purchasing. And I could be not
 9 quite right about the responsibility. But he was
 10 basically working in his house in -- I think Maryland,
 11 Baltimore.

12 We did not have anything there other than this
 13 guy. But he had people that he was supervising that
 14 were three time zones away or a couple of time zones
 15 away, and -- and yet we had, you know, a big opportunity
 16 to get purchasing for less.

17 By that I mean we're buying stuff, millions and
 18 millions and millions of dollars of stuff, and here
 19 is -- you know, my assessment was that if he would be
 20 with his people and if he would be near the financial
 21 people and if he would be in the headquarters, then he
 22 would be buying better.

23 And if he bought better, our cost would be
 24 better. And if our costs were better, our profit would
 25 be better. And that he ought to be where his job was.

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1 THE WITNESS: Well, of course, you know this
 2 because you were, you know, my counsel at a period of
 3 time. And we talked about it in due diligence and all
 4 of that.

5 And, you know, this release was vetted by, you
 6 know, Reed Smith and other lawyers and was vetted by,
 7 you know, half of the planet Earth at the time, and --
 8 likely. And if I could see source documents, if you had
 9 them, very likely David Friedman and very likely the
 10 full board of directors before it went out.

11 So I think at that time the majority of this
 12 was put back to the revolver. And my understanding of
 13 the covenants of the revolver were such that it required
 14 it; that you could then redraw it if you needed. That's
 15 how revolvers work.

16 A revolver is you take what you need when you
 17 need and then you put it back and then you take it again
 18 and you don't suffer the interest cost to warehouse
 19 money unless you needed it, you know, to pay the bills.

20 And we were running a cash report every day.
 21 I would get that report between 6 and 7 a.m. And the
 22 report would say, Here's what cash we entered in
 23 yesterday and here's what cash we have today and here's
 24 what cash we have to put out and where and here's what
 25 cash balance is.

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1 And I -- I'm thinking that's the guy that I can recall.
 2 Q. Do you recall anybody resigning because they
 3 did not want to move to Denver in the months after you
 4 became Coram's CEO?

5 A. Well, it surely could have happened. I -- I
 6 don't recall it.

7 Q. Mr. Crowley, I'd like to go back to Crowley
 8 Exhibit 31.

9 A. Okay.

10 Q. Mr. Crowley, it says -- and this is the press
 11 release announcing the completion of the CPS sale -- it
 12 says, in the second paragraph, The sale generated
 13 approximately \$38 million in cash after expenses. The
 14 cash proceeds are being used to pay the remaining
 15 outstanding principal balance under Coram Healthcare's
 16 revolving line of credit of \$28.5 million and \$9.5
 17 million is being applied to the principal of the Series
 18 A notes.

19 Do you see that?

20 A. Yes.

21 Q. Why were all of the net proceeds of the sale of
 22 CPS paid to the noteholders?

23 MR. SLAUGHTER: Objection to the form of the
 24 question. It lacks foundation. Calls for a legal
 25 conclusion.

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1 And this company was producing a cash
 2 projection as to what its -- I think it was a 13-week
 3 rolling cash projection as to what its obligations were.

4 And, you know, the debt was due. The debt
 5 contract was being told to me is requiring that the
 6 revolver be paid and -- and that the Series A be paid.
 7 And the projections were telling me we have adequate
 8 cash.

9 You know, the truth is we never drew on the DIP
 10 the entirety of the time. And I left a cash balance
 11 when I left Coram at -- you know, whenever it was in
 12 2003. And there was negative arbitrage on the money in
 13 the sense that we could only put it out short term. And
 14 what interest we would get paid on it was substantially
 15 less than the cost that we would have to pay on it.

16 And so, you know, the thinking, the reasonable
 17 business judgment that we were using, was that it saved
 18 the company money and it -- and it, you know, generated
 19 a positive return for the company to put it back.

20 And we had a contract saying we were supposed
 21 to put it back. And the best inside judgment was that
 22 we didn't need the cash, and it turned out we didn't.

23 And, you know, Friedman and bankruptcy
 24 counsel's, you know, fully aware in and copying him on
 25 all of that stuff, that we're doing this.

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1 And that nobody has said to me -- and, again
2 Rich, remember, I have not had any real bankruptcy
3 experience operating a firm in something like this, so I
4 wouldn't have known any different.

5 And it -- you know, in the end, Walrath's final
6 approval said it didn't matter. The company was
7 insolvent and money was due and it was paid and there
8 was no harm. So I'm not quite sure why you're asking
9 me.

10 BY MR. BARKASY: Q. The \$9.5 million was
11 applied to principal on the Series A notes; is that
12 correct?

13 A. I think that's what the words say. And it must
14 have been due.

15 Q. Well, it was a principal payment, not an
16 interest payment; right?

17 A. But I'm saying, we wouldn't have made a
18 principal payment unless it was due. And as I sit here,
19 I don't recall, but it -- I think it must have been due.
20 We wouldn't pay an early principal payment in that
21 company, so it must have been due and perhaps even in
22 default.

23 Q. Did you review the Securities and Exchange
24 Agreement with the noteholders before the \$9.5 million
25 was applied to principal in the Series A notes?

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1 BY MR. BARKASY: Q. Did you consider retaining
2 CPS and selling it in a Section 363 sale under the
3 bankruptcy code?

4 MR. SLAUGHTER: Objection. Calls for a legal
5 conclusion. Calls for speculation. Lacks foundation.

6 THE WITNESS: I don't -- I don't recall that
7 particularly. I think at the time we were getting
8 advice from lawyers and accountants and regulatory
9 counsels and the advisers of all shapes and sizes.
10 And -- I don't know that it was considered or not.

11 BY MR. BARKASY: Q. As of July 31, you were in
12 the process of negotiating with the noteholders
13 regarding the DIP financing, new notes to be provided
14 under Coram's bankruptcy plan and the amount of money to
15 be paid to shareholders under Coram's bankruptcy plan;
16 correct?

17 MR. SLAUGHTER: Object to the form.

18 THE WITNESS: Do you have something you would
19 like me to look at that you're looking at?

20 BY MR. BARKASY: Q. I'm asking you a question.

21 A. Well, I just don't recall.

22 Q. Okay. That's fine.

23 MR. SLAUGHTER: Rich, it's fair for him, as he
24 sees you pick up a piece of paper and you're apparently
25 reading from it, to wonder what you're looking at while

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1 A. You know, the CFO and Allen Marabito and
2 regulatory counsel and Ernst & Young and Friedman and
3 Benson and Torres and, you know, others would have
4 reviewed that, and I would have relied on them, who had,
5 you know, more expertise and their business judgment as
6 to what was required and appropriate.

7 Q. Who told you that it was required that
8 \$9.5 million be paid toward principal on the Series A
9 notes?

10 A. You know, as I sit here and try to recall who
11 told me in 2000, I'm going to say it's likely that it
12 was Scott Danis (phonetic) and Allen Marabito. And if
13 you can remember the name of the fellow at Reed Smith
14 who was steeped in that and working in it and
15 exercising, you know, the business judgment.

16 Q. You don't recall any particular conversation,
17 do you?

18 A. If -- you know, you've got something to refresh
19 my memory, I'd look at it. But as I sit here, I don't
20 recall it.

21 Q. Did -- Coram filed bankruptcy eight days after
22 the sale was completed; correct?

23 MR. SLAUGHTER: Objection.

24 THE WITNESS: Did it? I -- I don't know the
25 date.

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1 he's answering the question.

2 ///

3 (Marked for identification purposes,
4 Exhibit 34.)

5 BY MR. BARKASY: Q. Mr. Crowley, Exhibit -- is
6 Exhibit -- is Exhibit Crowley 34 a copy of a letter from
7 you to the Coram board of directors dated July 31, 2000?

8 A. It's a copy of a memo that's directed to the
9 board of directors, and it's also directed to
10 David Friedman, who was counsel advising the board on
11 what strategic alternatives were available to it and to
12 the people at Chanin that -- I'm not sure when we
13 actually finally got the valuation to say what the
14 company was worth and what its debt was versus what it
15 was worth.

16 Q. Well, you wrote this letter; correct?

17 A. Let me read it, then.

18 Okay. I wrote -- I wrote this letter, yes.

19 Q. In the first paragraph of the letter, you say
20 you contacted Cerberus and negotiated a DIP facility of
21 \$40 million at prime plus 2 percent with a 1 percent
22 fee; correct?

23 MR. SLAUGHTER: Second paragraph.

24 THE WITNESS: Well, what it says was, you know,
25 I talked to Chanin about what was a range of

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1 reasonably, and they told me 3 1/2 percent plus
 2 3 percent fees.
 3 And it says I discussed debtor-in-possession,
 4 DIP, financing with Bank of America, and they confirmed
 5 that that was right.
 6 And then I ground Cerberus in the dust to take
 7 35 percent less on the fee and -- close to 70 percent
 8 less, rather, on the fee and -- and 35 percent less on
 9 the facility itself. And that I tried to negotiate a
 10 benefit to the stockholders and had not been successful.
 11 And that I was prepared to modify the
 12 restructuring bonus that I had negotiated with the board
 13 to something different. And that they ought to think
 14 about it and consider it, and that we ought to get
 15 together as a board and talk about it.
 16 And here I'm advising lawyers and Chanin and
 17 advisers, this is what's going on post the board meeting
 18 on July 31.
 19 BY MR. BARKASY: Q. Who did you speak to at
 20 Cerberus regarding the DIP facility?
 21 A. You know, I'm not altogether certain I only did
 22 it. It may have been Allen Marabito and Scott Danis and
 23 myself and counsel. And I'm not clear that it was with
 24 Mark Neporent or Mark and Steve Feinberg or vice versa,
 25 but it was a sparky conversation.

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1 speculation.
 2 THE WITNESS: I see the words and all of that.
 3 I don't recall that I did it myself or that some others
 4 did it or Friedman did it or Allen or Scott Danis did it
 5 or -- just reading this doesn't refresh my memory,
 6 per se. Except that I -- I remember talking with the
 7 board about it and Amaral saying, It's a killer deal and
 8 it's -- you know, it's better than what he would be able
 9 to do or had a sense of what the market was, and it was
 10 good.
 11 BY MR. BARKASY: Q. So when you used the word
 12 "I" here in reporting to the board of directors what was
 13 going on within the negotiations on the new note under
 14 the plan, you might have meant Mr. Friedman or Mr. Danis
 15 or Mr. Marabito or some combination; correct?
 16 MR. SLAUGHTER: Object to the form of the
 17 question.
 18 BY MR. BARKASY: Q. Is that what you're
 19 saying?
 20 MR. SLAUGHTER: Object to the form of the
 21 question. Argumentative.
 22 THE WITNESS: As I sit here --
 23 MR. SLAUGHTER: And mischaracterizes testimony.
 24 THE WITNESS: In April of 2007, commenting on
 25 my letter of July 31, 2000, I simply can't recall all of

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1 Q. During that conversation, did Mr. Feinberg
 2 indicate that he was pleased because you were going to
 3 be sending the noteholders \$38 million in cash as a
 4 result of the closing of the sale of the CPS
 5 transaction?
 6 MR. SLAUGHTER: Object to the form.
 7 THE WITNESS: No. No. He seemed --
 8 BY MR. BARKASY: Q. He wasn't happy about
 9 that?
 10 A. Yeah. He had 135 million stuck in this thing.
 11 The totality of the debt was 300 million. These are
 12 people that had a company that was in default. He isn't
 13 giving me any compliments for anything.
 14 And now I'm grinding him into the dirt on a DIP
 15 well below market, and, you know, why is that? Why
 16 can't I get market? Because I want better. Give it to
 17 me. And he did.
 18 Q. In the -- by the way -- in the second paragraph
 19 you say you contacted Ed Mule at Goldman Sachs and
 20 Steve Feinberg at Cerberus to negotiate the terms of the
 21 new note.
 22 When was it that you spoke to Mr. Feinberg
 23 about the terms of a new note?
 24 A. I don't recall doing --
 25 MR. SLAUGHTER: Object to the form. Calls for

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1 the dynamics that went on in the process.
 2 BY MR. BARKASY: Q. You do remember Mr. Amaral
 3 telling you it was a killer deal, though?
 4 A. He said it, actually, in a board meeting.
 5 Q. In the next paragraph, you say that you
 6 requested that the current Coram stockholders receive
 7 ten cents per share in cash.
 8 A. Yeah. That was a -- Amaral, one, was a
 9 shareholder, of course. The board wanted the
 10 stockholders to get something. David Friedman's view
 11 was they're out of the money. They're not entitled to
 12 anything.
 13 Ed Mule's feeling was that Goldman had been
 14 disadvantaged by this investment and it was a terrible
 15 investment and that they ought not to get anything.
 16 And Friedman went back, I went back.
 17 Ultimately, I think there was an independent committee,
 18 and Amaral and perhaps Casey and someone else maybe --
 19 board minutes might show it -- went back and everybody
 20 went back, trying to get something for the equity.
 21 And we met with, you know, Calis Turndan
 22 (phonetic). So that -- that was part of the process
 23 that was going on back then.
 24 Q. Did you have discussions with Mr. Feinberg
 25 about money going to the equity as part of Coram's plan?

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1 counsel that with this process, that Feinberg ought to
 2 get off the board and let the independent directors
 3 decide what goes on with the company. And that's what
 4 he did.
 5 Q. Was there a concern about a conflict?
 6 A. I don't think --
 7 MR. SLAUGHTER: Object to the form.
 8 THE WITNESS: I don't think I could sit here
 9 and tell you now, having just answered I don't recall
 10 what the reasons totally were. But he did resign, and
 11 he resigned on the advice from counsel.
 12 MR. SLAUGHTER: Why don't we go off the record
 13 and take a break.
 14 MR. BARKASY: Yes.
 15 THE VIDEOGRAPHER: Off record at 5:05.
 16 (Recess taken, from 5:05 to 5:16.)
 17 THE VIDEOGRAPHER: On record at 5:16.
 18 BY MR. BARKASY: Q. Mr. Crowley, did you have
 19 any discussions with Mr. Feinberg in or around July 31,
 20 2000, about whether it was appropriate for you and he to
 21 be discussing the terms and conditions of Coram's plan
 22 of reorganization given your contractual relationship
 23 with Cerberus?
 24 A. I don't recall.
 25

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1 Do you see that?
 2 A. Yes.
 3 Q. Did Mr. Feinberg tell you that he was pleased
 4 that you had generated \$60 million of cash for the debt
 5 holders during 2000?
 6 A. The board was pretty pleased and excited about
 7 it because it created equity value by reducing the
 8 obligation on the company. And so it narrowed the gap
 9 of insolvency, so they were really excited about it.
 10 But Feinberg could care less.
 11 Q. Feinberg didn't care about receiving Cerberus's
 12 portion of the \$60 million paid to the noteholders?
 13 MR. SLAUGHTER: Object to form.
 14 THE WITNESS: You'd have to ask him if he cared
 15 about it, but he never told me.
 16 BY MR. BARKASY: Q. Did you, in or about
 17 July 31, 2000, request that the noteholders permit Coram
 18 to use a portion of the net proceeds of the sale of CPS
 19 so that Coram could make payment in full to Coram's
 20 general unsecured creditors?
 21 MR. SLAUGHTER: Object to the form. Vague and
 22 ambiguous.
 23 Do you understand the question?
 24 THE WITNESS: No. I understand the question.
 25 I'm not sure as to the logic at that time. I

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1 (Marked for identification purposes,
 2 Exhibit 36.)
 3 BY MR. BARKASY: Q. Mr. Crowley, Exhibit
 4 Crowley 35 --
 5 THE REPORTER: Thirty-six.
 6 BY MR. BARKASY: Q. -- 36 is a copy of a
 7 letter from you to Steven Feinberg, Ed Mule and
 8 Ed Stearns dated July 31, 2000; correct?
 9 A. It's a copy of a letter sent to Feinberg, Mule,
 10 Ed Stearns and to the entire Coram board of directors,
 11 with attachments that are not seen on this.
 12 And it also says it's gone to David Friedman
 13 and Russ Belinsky at Chanin, with attachments. So it
 14 appears to have gone to more than what you just said.
 15 Q. Is that your handwriting on the side, on the
 16 right side?
 17 A. No. That's -- that's not my handwriting.
 18 Q. Whose handwriting is that?
 19 A. I -- I don't know. It does say, Coram board of
 20 directors down below my signature.
 21 Q. In the last paragraph, you wrote, Earlier this
 22 year, we voluntarily repaid 15.5 million early on the
 23 revolver, 6.3 million in interest, and with the
 24 38 million, we have generated 60 million in cash for the
 25 debt holders.

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1 mean, here this thing has gone to Dave Friedman, who's
 2 counsel to the board and is a party to this. And here
 3 it's -- it's obviously going to the board. It's --
 4 there's a board member named on the top of the note.
 5 I have to reason to believe that the full board
 6 didn't receive it. And here it's showing in Goldin and
 7 equity and, you know, you guys have had it as well and
 8 discovered it and you even discussed it with me.
 9 I don't think we had, you know, full
 10 appreciation of what the value of the firm was. And I
 11 wasn't receiving advice from counsel to the contrary.
 12 And the contracts called for it.
 13 Cash flow suggested it was a good -- okay. The
 14 arbitrage made it logical. The cash forecast didn't
 15 suggest otherwise. We never drew on the DIP
 16 subsequently. And Walrath found that the payments were
 17 owed in her approval of the confirmation of the
 18 trustee's plan. I --
 19 BY MR. BARKASY: Q. I'd like you to focus on
 20 the question that -- that I asked you.
 21 A. Which one?
 22 Q. Which was did you, in or about July 31, 2000,
 23 contact the noteholders and ask them whether they would
 24 consent to Coram using some of the net proceeds of the
 25 sale of CPS toward payment of Coram's general unsecured

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1 creditors under Coram's bankruptcy plan?
 2 MR. SLAUGHTER: Object to the form.
 3 THE WITNESS: I don't recall doing that.
 4 MR. BARKASY: What?
 5 BY MR. BARKASY: Q. Well, you were negotiating
 6 the terms of the plan on July 31, 2000; correct?
 7 MR. SLAUGHTER: Object to the form.
 8 THE WITNESS: I think the document, you know,
 9 you showed me earlier, there's a -- at the conclusion of
 10 the board meeting on July 31st, we proceeded to contact
 11 folks and all of that, and we talked about that back and
 12 forth.
 13 It wasn't clear that we were going to be filing
 14 bankruptcy yet. And I don't think we filed it until
 15 sometime in August, because we didn't have a valuation.
 16 BY MR. BARKASY: Q. On July 30 you were
 17 negotiating a DIP facility, and a DIP facility is a
 18 debtor-in-possession facility in a Chapter 11 case;
 19 right?
 20 MR. SLAUGHTER: Object to the form.
 21 THE WITNESS: On July 31st we've seen a note
 22 from me saying that we were in the process of trying to
 23 negotiate a debtor-in-possession financing facility.
 24 BY MR. BARKASY: Q. Right. And that -- and
 25 that would be only be applicable in a Chapter 11

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1 (Reporter clarification.)
 2 THE WITNESS: The Chanin capital valuation.
 3 And you know that, Rich.
 4 (Marked for identification purposes,
 5 Exhibit 37.)
 6 BY MR. BARKASY: Q. Mr. Crowley, Exhibit
 7 Crowley 37 is a letter from you to the Coram board of
 8 directors dated July 24th, 2000; correct?
 9 A. Yes.
 10 MR. SLAUGHTER: Object -- objection. It's more
 11 than just a letter.
 12 THE WITNESS: Yes.
 13 BY MR. BARKASY: Q. And there's attachments to
 14 the letter; correct?
 15 A. Yes.
 16 Q. Okay. And one of those attachments is a
 17 preliminary valuation report that you received from
 18 Chanin; correct?
 19 A. It's a draft.
 20 Q. And the other attachment is a revision to the
 21 valuation; correct?
 22 MR. SLAUGHTER: Object to the form.
 23 Can you point us to where you're referring? I
 24 only have -- I'm sorry. There's two things. I
 25 apologize.

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1 bankruptcy case; right?
 2 A. If we were to file one. And that wasn't
 3 decided or clear and we had not.
 4 Q. And the new notes referred to in the third
 5 paragraph of your letter are the new notes that were
 6 going to be issued under Coram's Chapter 11 plan of
 7 reorganization; correct?
 8 MR. SLAUGHTER: Objection. Argumentative.
 9 Object to the form.
 10 Are you -- what document are you referring to,
 11 Rich?
 12 MR. BARKASY: The July 31, 2000, letter from
 13 Mr. Crowley to the Coram board of directors, which is
 14 marked as Crowley Exhibit 34.
 15 THE WITNESS: Well --
 16 MR. SLAUGHTER: Further, the question lacks
 17 foundation.
 18 THE WITNESS: Well, this -- this July 31st
 19 letter I think is in contrast to whatever the plan
 20 actually was that was arrived at. It was written by
 21 counsel. It was approved by the board unanimously.
 22 And it was not a given that this company was
 23 going to file for Chapter 11. It didn't have the
 24 bankruptcy plan filed, and we hadn't received the Chanin
 25 capital valuation. And you know that, Rich.

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1 THE WITNESS: My recollection of this document
 2 is that this was a draft. It was preliminary. It was
 3 subject to change, and that it was not the final report
 4 from Chanin.
 5 BY MR. BARKASY: Q. Okay. Let's -- let's look
 6 at your letter.
 7 In the first sentence, it says, Over the past
 8 weekend, we received and reviewed the preliminary
 9 valuation report from Chanin Capital Partners.
 10 Is that statement accurate?
 11 A. It appears to be the preliminary report.
 12 Q. Okay. It goes on to say, Adjustments were made
 13 to make the cash flow in 2001 and forward somewhat more
 14 conservative in keeping with my view of the business and
 15 its prospects.
 16 Do you see that?
 17 A. Yes.
 18 Q. What adjustments were made to make the cash
 19 flow in 2001 and forward more conservative in keeping
 20 your view of the business?
 21 A. Yeah. I don't recall, as I sit here, except to
 22 say that the accounting department, Scott Danis and the
 23 people who were involved in the projecting of the cash
 24 and the actual flows of the company, were looking at it
 25 and feeding into Chanin information such as they knew

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1 (Record read as follows:
 2 "Q Did you -- after the first -- after
 3 confirmation of the first plan was denied
 4 by the Bankruptcy Court, did you discuss
 5 with Mr. Feinberg whether you should sever
 6 your employment arrangement with
 7 Cerberus?")
 8 THE WITNESS: You know, I vaguely recall
 9 discussing it with Steve Feinberg. And particularly I
 10 remember discussing it with David Friedman and
 11 discussing it with the full board of directors, you
 12 know, what was I being paid, why was I being paid, what
 13 I did for it, how did that relate to Coram or not relate
 14 to Coram and the amount of money involved.
 15 We had a full face-to-face meeting, and I think
 16 they were all there. All the board members. And I do
 17 generally recall having a pretty detailed conversation
 18 with David Friedman about it. And what do we do with
 19 this and how do we get this -- our company out of
 20 bankruptcy and what do I need to do.
 21 And I may have discussed it with Steve. I
 22 think I did.
 23 BY MR. BARKASY: Q. Do you remember what you
 24 and Steve said when you were discussing whether you
 25 should sever your relationship with Cerberus?

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1 The Court didn't find it so.
 2 And so counsel was saying disclose it in the
 3 most clear fashion that we possibly can. And I think
 4 regulatory counsel and restructuring counsel rewrote it
 5 and put in a much more thorough and adequate disclosure.
 6 Q. Did you consider resigning your position at
 7 Coram as a result of the Bankruptcy Court's decision
 8 denying confirmation of Coram's first plan of
 9 reorganization?
 10 A. Yeah. I -- I considered it and the board
 11 considered it, and we discussed it. And counsel
 12 discussed it. And we talked about it quite a bit.
 13 Q. And why was it that you decided not to resign
 14 your position at Coram?
 15 A. Well, flat out, I think I did a terrific job
 16 there. And I think that, you know, I had a disagreement
 17 with the judge as to whether I had, in fact, a conflict
 18 because everything about my arrangement with Coram was
 19 to generate as, you know, great an EBITDA earnings and
 20 improve the company.
 21 And, you know, on one hand, Walrath was saying,
 22 you know, it's sad that there's this apparent conflict
 23 because you've done, you know, such a terrific job here
 24 and the company is hopelessly insolvent. And I'm sure
 25 I'll find in another plan that it is insolvent.

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1 A. Well, it -- it's a long time ago, but I think
 2 we came to the conclusion that it was more of -- as
 3 David Friedman advised, a disclosure matter, and
 4 adequately disclose it. If we didn't, it was
 5 inadvertent.
 6 We'd pile on the disclosures. And I think
 7 you'd find that thereupon in the 10-K and -- for year
 8 2000, it was a fairly thorough disclosure that included
 9 the amount of money and everything related to it.
 10 And then it was a disclosure in the SEC
 11 document, 10-Q, for March and then for June and then for
 12 September and then December. And then in the Q -- of
 13 the K for 2001 and thereafter.
 14 So the advice was from counsel that the board
 15 ought to form an independent committee and hire an
 16 independent outsider. And the Court approved Goldin,
 17 and the disclosures were-- you'd have to show me what
 18 they were in the K and Qs, but I think they were very
 19 thorough.
 20 Q. Were they more thorough than the disclosures
 21 that were made for the fiscal year ending 12/31/99?
 22 A. I -- I think that they expanded to add the
 23 \$80,000 a month that you've been asking me all day
 24 about. Because it -- well, I felt that it was
 25 adequately disclosed. It doesn't matter what I thought.

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1 On the other hand -- you know, so here I think
 2 I've done a terrific job. And a U.S. Bankruptcy Court
 3 judge is saying, You did a good job.
 4 And the board of directors were lauding me and
 5 complimenting me all the way along the way for doing a
 6 great job. And it just seemed to me I ought not to be
 7 run out of Dodge for no apparent reason when I've saved
 8 the company and a couple thousand jobs.
 9 And I was willing to be open to the scrutiny of
 10 this independent adviser they chose, Harrison J. Goldin,
 11 and not afraid of it. I just felt, gosh, I saved the
 12 company, and I've done everything I know how to make it
 13 better. And so be it. Come ahead. Investigate me
 14 however you want.
 15 And Harrison Goldin went about ripping the
 16 company apart from pillar to post. And I never knew
 17 what was going to come out of it until the end of it,
 18 but -- except to say that I know in my heart I did a
 19 great job at Coram, and I wasn't going to leave with my
 20 tail between my legs for no reason. So, yeah, I
 21 considered it.
 22 You know, the board could have tossed me. No
 23 doubt about it. That board was comprised of independent
 24 thinking. Don Amaral has never been anyone's sycophant.
 25 (Reporter clarification.)

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SHEET 62 PAGE 245

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1 THE WITNESS: Anyone's sycophant,
 2 S-Y-N-C-H-O-P-H-A-N-T [sic].
 3 And they chose to keep me and complimented me.
 4 So I, you know, made a decision. I could stay.
 5 And more completely disclosed, to the extent that I
 6 inadvertently may not have fully disclosed, and I
 7 thought that I had.
 8 BY MR. BARKASY: Q. You mentioned that the
 9 Court discussed and -- the Court found -- let me
 10 withdraw that.
 11 The Court found that there was an actual
 12 conflict of interest; is that right?
 13 MR. SLAUGHTER: Objection. Lacks foundation.
 14 Calls for a legal conclusion.
 15 THE WITNESS: You know, you're an attorney, and
 16 whatever the Court found, you -- you know, she can say
 17 that it's an actual conflict, and I would say we have a
 18 disagreement.
 19 And there are decent people in the room, and I
 20 respect her thoroughly. But, you know, I saved the
 21 company, and I know it and everyone who worked there
 22 knows it.
 23 BY MR. BARKASY: Q. Would --
 24 (Marked for identification purposes,
 25 Exhibit 42.)

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1 walk off from it. But I -- I really wanted to see it
 2 through. And, Rich, I just was convinced in my heart I
 3 had done a lot of good and nothing wrong.
 4 BY MR. BARKASY: Q. Mr. Crowley, Exhibit
 5 Crowley 42 is the portion of the transcript of the
 6 proceedings before Judge Walrath on December 21, 2000,
 7 in which she rendered her ruling regarding the debtor's
 8 first plan.
 9 And if you could look at page 89.
 10 A. (Witness complies.)
 11 Q. And at the top, Judge Walrath says, I don't
 12 know what would have happened without this actual
 13 conflict of interest. I do think it's an actual
 14 conflict of interest.
 15 Do you see that?
 16 A. I do. And I remember talking to your boss
 17 about it, Arlin Adams, who told me that he thought she
 18 said too much on the record and she was wrong.
 19 Q. All right. Given that Judge Walrath thought
 20 that your relationship with Cerberus presented an actual
 21 conflict of interest, would the safest thing for Coram
 22 have been for you to either resign from Coram or sever
 23 your relationship with Cerberus?
 24 MR. SLAUGHTER: Object to the form of the
 25 question. Lacks foundation. Calls for speculation.

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1 THE WITNESS: Is it possible be to take a two-
 2 or three-minute break and just uncrick my back?
 3 MR. BARKASY: Yes.
 4 THE VIDEOGRAPHER: Off the record at 6:12.
 5 (Recess taken, from 6:12 to 6:19.)
 6 THE VIDEOGRAPHER: On record at 6:19.
 7 BY MR. BARKASY: Q. Mr. Crowley, when you were
 8 deciding what to do with regard to your contractual
 9 relationships with Coram and Cerberus after the
 10 Bankruptcy Court denied confirmation of Coram's first
 11 plan, your primary concern was what was in the best
 12 interest of Coram; is that right?
 13 MR. SLAUGHTER: Object to the form.
 14 You can answer.
 15 THE WITNESS: Well, my -- I mean, my primary
 16 interest was -- as CEO of Coram was always to do the
 17 best I could for the company. And I'm a pretty ethical
 18 guy. I think -- I wanted Coram to succeed, and I also
 19 wanted Coram to get out of bankruptcy.
 20 And I -- you know, I talked with the directors
 21 and -- and David about it and came to the conclusion in
 22 my own heart and mind that, you know, Coram was hanging
 23 on me and my skills and talent and smarts and
 24 experience, and that I ought not to walk off from it.
 25 If someone said I had to walk off from it, I'd

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1 Calls for a legal conclusion.
 2 Other than that, you may answer.
 3 THE WITNESS: Well, you know, I -- I read this
 4 back then. And I remember feeling personally stunned by
 5 it, and it broke my heart at the time because, you know,
 6 here's this lady saying, I think there is evidence that
 7 Mr. Crowley did do a good job operationally in helping
 8 the debtor turn around.
 9 And -- and here's this, you know, lady saying,
 10 Even on its numbers, which I agree with the creditor
 11 committee's counsel, that under any of the numbers, the
 12 company is insolvent today.
 13 So I'm in a court. This federal judge is
 14 saying the company is insolvent today. She's saying
 15 Crowley did a good job operationally. She doesn't like
 16 the relationship.
 17 And lawyers are saying to me -- David Friedman
 18 is saying to me directly, and Boris Feldman (phonetic)
 19 is saying to me directly, This is a disclosure thing,
 20 Dan. Put a more expansive disclosure out there. Let
 21 this independent committee do what it's going to do. Go
 22 run the company.
 23 You know, and I -- I wanted to continue and see
 24 this thing through. I -- you know, I wanted to get it
 25 out of bankruptcy, and I wanted the company to prosper

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SHEET 1 PAGE 1

1 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

2 Case No. 04-1565

3 -----

4 VIDEO DEPOSITION OF SCOTT R. DANITZ
April 6, 2007

5 -----

6

7 ARLIN M. ADAMS, Chapter 11 Trustee of the
Post-Confirmation Bankruptcy of Estates of Coram
HEALTHCARE CORPORATION, and of CORAM, INC., a
Delaware corporation,
8 Plaintiffs,

9 vs.

10 DANIEL D. CROWLEY, DONALD J. AMARAL, WILLIAM J.
CASEY, L. PETER SMITH, and SANDRA L. SMOLEY,
11 Defendants.

12 -----

13 APPEARANCES:

14 SCHNADER HARRISON SEGAL & LEWIS, LLP
By Barry E. Bressler, Esq.
16 1600 Market Street, Suite 3600
Philadelphia, Pennsylvania 19103-7286
215-751-2050
bbressler@schnader.com
18 Appearing on behalf of Plaintiffs.

19 KEKER & VAN NEST, LLP
By Laurie Carr Mims, Esq.
20 710 Sansome Street
San Francisco, California 94111-1704
415-391-5400
lmims@kvn.com
22 Appearing on behalf of Defendant
Daniel D. Crowley.

23 Also Present: Carie Finegan, Videographer

24

25

PAGE 3

1 I N D E X (Continued)

2 Exhibit 5 Fa: transmittal page to Coram 83
Healthcare Board of Directors
3 from Daniel D. Crowley, 3/9/01;
Letter to Coram Healthcare Board
4 of Directors from Daniel D.
Crowley, 3/9/01, COR-EQTY
5 0009064 - 0009071

6 Exhibit 6 Letter to Judge Arlin M. Adams 105
from Daniel D. Crowley, 8/5/02,
7 with attachments, CH-11 TRUSTEE
004448 - 004462

8

9 Exhibit 7 Letter to Keith W. Mumford from 107
Scott R. Danitz, 11/6/02, with
attachment, CH-11 TRUSTEE/
10 CrowleyAdmin 014839 - 014841

11 Exhibit 8 10-K form for fiscal year ending 125
12/31/00

12 Exhibit 9 10-K form for fiscal year ending 128
12/31/01

13 Exhibit 10 E-mail to dcrowley@attglobal.net 133
from Vito Ponzio, 3/8/03,
14 CROWLEYKVN 000324 - 000325

15 Exhibit 11 Memo to Denver Planning Meeting 145
Attendees from Daniel D. Crowley,
12/16/99, CROWLEYKVN 017682 -
17 017683

18 Exhibit 12 Selected Reorganization Expenses 162

19 Exhibit 13 Letter to "Dear Friend of Coram" 165
from Scott R. Danitz, 1/19/01,
20 CROWLEYKVN 018187

21

22 PREVIOUSLY MARKED EXHIBITS PAGE #

23 Marabito 3 Letter to Don Amaral from 197
Daniel D. Crowley, CROWLEY
0075 - 0076

24

25

PAGE 2

1 Pursuant to Notice and the Federal Rules
2 of Civil Procedure, the video deposition of SCOTT R.
3 DANITZ, called by Defendant Daniel D. Crowley, was
4 taken on Friday, April 6, 2007, commencing at
5 9:00 a.m., at 410 17th Street, Denver, Colorado,
6 before Vanessa D. Campbell, Registered Professional
7 Reporter and Notary Public within and for the State
8 of Colorado.

I N D E X

11 VIDEO DEPOSITION OF SCOTT R. DANITZ

12 EXAMINATION BY: PAGE

13 Mr. Bressler 137, 208

14 Ms. Mims 6, 200

15

EXHIBIT NAME	DESCRIPTION	PAGE #
17 Exhibit 1	Notice of Third-Party Subpoena to Scott Danitz	12
18 Exhibit 2	Agent, March 25, 2002, Coram Executive Overview for Arlin M. Adams, Esq., Chapter 11 Trustee, CH-11 TRUSTEE 000345 - 000422	38
21 Exhibit 3	Letter to Ernst & Young LLP from Scott Danitz, 12/15/99, COR-EQTY 0001681 - 0001683	52
23 Exhibit 4	Minutes of a meeting of the board of directors of Coram Healthcare Corporation, 7/31/00, TRUSTEE 01721 - 01729	72

24

25

PAGE 4

1 I N D E X (Continued)

2 Marabito 8 Memorandum to various parties 113
from Shaunna Stribling, 2/11/00,
3 with attachments,
COR-EQTY0002727 - 0002796

4

5 Marabito 12 Letter to Barry E. Bressler from 176
Allen J. Marabito, 4/22/02, with
6 attachments, CH-11 TRUSTEE/
CrowleyAdmin005719 - 005811
and CXR 003348

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SHEET 35 PAGE 137

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1 A No.
 2 MS. MIMS: I have no further questions at
 3 this time, but I'd like to reserve the right to ask
 4 questions after Mr. Bressler asks his questions.
 5 Thank you.
 6 THE VIDEOGRAPHER: We are off the record
 7 at 1:40.
 8 (A recess was taken from 1:40 p.m. to
 9 1:41 p.m.)
 10 THE VIDEOGRAPHER: We are back on the
 11 record at 1:41.
 12 EXAMINATION
 13 BY MR. BRESSLER:
 14 Q Good afternoon, Mr. Danitz.
 15 A Hello.
 16 (Pause.)
 17 Q Why don't we start out where Ms. Mims
 18 finished off. Could you get in front of you Danitz
 19 Exhibit 8 and Danitz Exhibit 9?
 20 (Pause.)
 21 Q Am I correct that your testimony was that
 22 you recognized these as the SEC 10-K filings for the
 23 fiscal years ended December 31, 2000 and
 24 December 31, 2001?
 25 A Yes.

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1 A It would have been right on the eve of our
 2 confirmation hearings, near November, December of
 3 2000.
 4 Q Prior to that, Mr. Crowley had never told
 5 you he had an employment contract with Cerberus, did
 6 he?
 7 A No, he did not.
 8 Q Prior to that no one from Cerberus ever
 9 told you that they had an employment contract with
 10 Mr. Crowley, did they?
 11 A No, they did not.
 12 Q I think Ms. Mims went through the
 13 disclosure language with you in Danitz 8 and
 14 Danitz 9, and the description of Mr. Crowley's
 15 contract with Cerberus was identical.
 16 A Right. I -- I didn't compare
 17 word-for-word, but I didn't see any differences
 18 between the two up to a certain point in time.
 19 Q And the difference that you found in
 20 Danitz 9 was the language about the suspension of
 21 Mr. Crowley's contract with Cerberus, which appeared
 22 several paragraphs later?
 23 A It was the paragraph right after the first
 24 disclosure of the agreement.
 25 Q And I'll direct your attention to Danitz 9

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1 Q There was a similar filing for the fiscal
 2 year ended December 31, 1999; is that correct?
 3 A Yes.
 4 Q Were you also involved in the process that
 5 led to that filing?
 6 A Yes.
 7 Q Ms. Mims showed you some disclosures
 8 regarding Mr. Crowley's relationship with Cerberus
 9 in each of these two documents. Do you recall that?
 10 A Yes.
 11 Q Was there, to your recollection, any such
 12 description in the 10-K for the prior period ending
 13 December 31, 1999?
 14 MS. MIMS: Object to form.
 15 A No.
 16 Q (By Mr. Bressler) I think you testified
 17 that the first time you were aware that Mr. Crowley
 18 had an employment contract with Cerberus was after
 19 it became an exhibit at the bankruptcy court hearing
 20 on confirmation of the first plan; is that correct?
 21 MS. MIMS: Objection. Mischaracterizes
 22 his testimony.
 23 Q (By Mr. Bressler) Mr. Danitz, when's the
 24 first time you became aware that Mr. Crowley had an
 25 employment contract with Cerberus?

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1 at Page 53.
 2 (Pause.)
 3 A Yes. I'm there.
 4 Q And on the part of Page 53 that runs over
 5 to the end of the page, the language was,
 6 "Mr. Crowley and Cerberus agreed to suspend their
 7 contract and all related obligations immediately
 8 after the bankruptcy court's denial of the second
 9 plan of reorganization on December 21, 2001, and the
 10 contract remains suspended through April 12th,
 11 2002."
 12 A Yes.
 13 Q What did the words "and all related
 14 obligations" mean?
 15 MS. MIMS: Object to form.
 16 A That would have been in the context of
 17 the -- the document that Mr. Crowley and Cerberus
 18 had in place.
 19 Q (By Mr. Bressler) Do you recall if there
 20 was an obligation in that document for Mr. Crowley
 21 to follow Cerberus' directions or be subject to
 22 termination?
 23 A I recall in general terms, yes, that
 24 that -- that was included in the document.
 25 Q So would that be a related obligation that

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SHEET 43 PAGE 169

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1 A It -- again, a user group, and really had
2 close ties to us, because we looked to work with
3 them for any potential referrals of patients.
4 Q Do you recall in early 2001 that they
5 expressed some concerns about Coram because of the
6 bankruptcy proceedings in December 2000?
7 A Yes.
8 Q Who was Nutrashare?
9 A I do not recall who Nutrashare was.
10 Q Do you know who Health Net is?
11 A Yes.
12 Q And who are they?
13 A They were one of our major customers,
14 and -- out in California.
15 Q In 2003, did Health Net send Coram a
16 request for proposal in connection with renewal of
17 their contract?
18 A Yes.
19 Q And do you recall participating and
20 responding to that RFP?
21 A Yes.
22 Q Did Mr. Melancon also participate in
23 responding to that RFP?
24 A Yes.
25 Q In fact, he would be the lead on that?

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1 second plan of reorganization was not confirmed
2 damage Coram's ability to increase sales?
3 MS. MIMS: Object to form.
4 MR. BRESSLER: You may answer.
5 A It -- it would have damaged it some, yes.
6 Q (By Mr. Bressler) Looking back at the
7 historical performance of the company, was 1999 a
8 particularly bad year for Coram?
9 A Yeah, it was a terrible year.
10 Q And could you expound on why you think
11 that was?
12 A Well, first of all, we were expending a
13 lot of cash on the Resource Network Group, and it
14 was operating at a loss. The contracts that it had
15 entered into just weren't profitable.
16 The Coram Prescription Services was a
17 start-up business, as well, and wasn't generating
18 enough profitability to make a difference for the
19 company, and then the base business, parts of it
20 were doing well and the other parts were not doing
21 well. We had some branches that were operating at
22 losses, and Clinical Trials Group, CTI, was, again,
23 a start-up and -- and not contributing any
24 profitability.
25 Q Were there still problems from the

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1 A Yes, he was. He was responsible for our
2 man -- managed care group, and he was the primary
3 contact with the customer.
4 Q Do you recall that at some point in time
5 Health Net wanted assurances that Coram would
6 finally get out of bankruptcy?
7 A Yes.
8 Q And did there come a time when there were
9 conference calls with Health Net to offer those
10 assurances?
11 A There were conference calls and meetings
12 and a lot of paperwork provided, as well, yes.
13 Q I didn't want to underestimate.
14 When Health Net finally did renew the
15 contract, were there provisions in it that they
16 could terminate the contract if Coram did not exit
17 bankruptcy within a particular period of time?
18 A Yes.
19 Q Do you recall also previously testifying
20 in 2001 that emerging from bankruptcy would increase
21 sales and the ability to increase sales for Coram?
22 A Yes.
23 Q Do you believe that was true at the time?
24 A Yes.
25 Q Did not emerging from bankruptcy when the

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1 CareMark role in in 1999?
2 A There were some, in that we had this level
3 of debt that we couldn't service.
4 Q Perfect segue to my next topic. Ms. Mims
5 asked you whether the revolver that Coram had with
6 its lenders was at a high rate of interest. Do you
7 recall that?
8 A Yes.
9 Q And I think your answer is the revolver
10 doesn't have to be at a high rate of interest, does
11 it?
12 MS. MIMS: Object to form.
13 Q (By Mr. Bressler) Does a revolver have to
14 be a loan at a high rate of interest?
15 A No.
16 Q Just like a credit card that Ms. Mims
17 referred you to, you could have a credit card that
18 had a bargain low rate of interest or a credit card
19 with a very high rate of interest, couldn't you?
20 MS. MIMS: Object to form. And he called
21 it like a credit card.
22 A I did call it like a credit card.
23 Q (By Mr. Bressler) And you could have a
24 credit card with a very low interest rate?
25 A A percent of zero to very high rates, yes.

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SHEET 44 PAGE 173

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1 Q Likewise, depending on what you negotiate
2 with a lender, you could have a very low rate of
3 interest or a very high rate of interest.
4 A Yes.
5 Q Did Mr. Crowley seem particularly
6 interested in paying off debt owed to the note
7 holders?
8 MS. MIMS: Object to form.
9 A Can you repeat the question?
10 Q (By Mr. Bressler) Yes. Did Mr. Crowley
11 seem particularly interested in paying off debt owed
12 to the note holders?
13 MS. MIMS: Same objection.
14 A It was -- yes, he did. He had a high
15 priority. That was a high priority.
16 Q (By Mr. Bressler) And did he ever explain
17 to you why that was?
18 A I -- I don't recall.
19 Q In hindsight, do you think the fact that
20 Mr. Crowley had a \$960,000 a year contract with
21 Cerberus at this time that was not disclosed to you
22 or anyone else at Coram might have influenced his
23 decisions in regard to paying off debt?
24 MS. MIMS: Object to form,
25 mischaracterizes the record.

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1 paragraph out loud?
2 A Yes. "Mr. Tillman added that a bankruptcy
3 proceeding does not suspend Stark II and the Company
4 was required to follow the law."
5 Q What did you understand that to mean?
6 A That in order -- well, under bankruptcy we
7 would still have the requirement of meeting the
8 \$75 million equity.
9 Q So filing of bankruptcy did not relieve
10 you of that requirement under Stark II.
11 A No, not at all.
12 Q So if the lenders had agreed to exchange
13 debt for equity either in bankruptcy or out of
14 bankruptcy, that was a way of satisfying Stark II.
15 A Yes.
16 MS. MIMS: Object to form.
17 Q (By Mr. Bressler) But the filing of a
18 bankruptcy in and of itself wasn't going to satisfy
19 Stark II, was it?
20 A No.
21 (Pause.)
22 Q Were you familiar with Stephen Feinberg?
23 A Yes.
24 Q And who was he?
25 A He was the principal at Cerberus and then

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1 Q (By Mr. Bressler) You may answer.
2 A That could have an influence on decisions,
3 yes.
4 Q Would it have had an influence on you?
5 A If I had --
6 MS. MIMS: Object to form, hypothetical.
7 A Would it have an influence on me? I would
8 have to say yes, because I had a -- an arrangement,
9 that I was being paid by one of the lenders.
10 (Pause.)
11 Q (By Mr. Bressler) Could you find Danitz
12 No. -- Exhibit No. 4? Would you locate that?
13 (Pause.)
14 Q The problem is I have to also. Do you
15 have that in front of you, Mr. Danitz?
16 A Yes, I do.
17 Q And I think you said you were at this
18 board meeting as indicated by these minutes?
19 A Yes.
20 Q Direct your attention to Page 01725.
21 A Yes.
22 Q Second paragraph in is headed "Stark II
23 Alternatives"?
24 A Yes.
25 Q Could you read the last sentence of that

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1 became a board member at Coram Healthcare
2 Corporation.
3 Q And did there come a time when
4 Mr. Feinberg no longer sat on the board at Coram
5 Healthcare Corporation?
6 A Yes.
7 Q He resigned?
8 A He resigned.
9 Q And do you remember why?
10 A I do not remember why.
11 Q Do you remember when?
12 A It would have been, I recall, in 2000 --
13 sometime in 2000, before the Chapter 11 filing.
14 MR. BRESSLER: May I have Marabito
15 Exhibit 12, please?
16 (Pause.)
17 MS. MIMS: Can we go off the record for a
18 minute?
19 MR. BRESSLER: Why don't we go off the
20 record for a minute.
21 THE VIDEOGRAPHER: We are off the record
22 at 2:39.
23 (A recess was taken from 2:39 p.m. to
24 2:45 p.m.)
25 THE VIDEOGRAPHER: We are back on the

Corporate Compliance Handbook

- Mission
- Coram Cornerstones
- Standards of Conduct
- The Coram Compliance Program
- The Coram Compliance Hotline



C O R A M H E A L T H C A R E

Peter Smith
FOR I.D. 9-24-01 EXHIBIT 10 12

B495

SSM 000026
CONFIDENTIAL

Conflicts of Interest

CONDUCT STANDARD NO. 4

*We shall refrain from
and avoid conflicts or
appearance of conflicts
between our private
interests and our
responsibilities as
Coram employees.*

- We shall avoid engaging in any activity, practice or act which conflicts with the interests of Coram or its patients. Situations that would create an actual or apparent conflict of loyalty or interest must be avoided. Actions that have the potential to create a conflict of interest must be disclosed and approved in advance by appropriate higher authority.
- We shall not engage in any outside employment that interferes with our ability to adequately perform our duties at Coram. Placing business with any firm in which there is a family relationship, or hiring or having a reporting relationship with relatives may constitute a conflict of interest. Advance disclosure and approval are required in such a situation.
- Investment in any organization that is a potential competitor, supplier or customer of Coram requires prior written approval. An exception is granted for an investment in stock purchased on a public exchange that constitutes less than 1% of the total outstanding stock of the issuing corporation.
- We shall not become involved, directly or indirectly, in outside commercial interests which could improperly influence our actions. This would include being an officer, director, manager or consultant of a potential competitor, customer, or supplier of Coram.
- Employees shall avoid accepting or providing benefits that could be seen as creating conflict between their personal interests and Coram's legitimate business interests. This includes accepting expensive meals, gifts, refreshments, transportation, or entertainment provided or received in connection with the job.
- We shall not accept gifts provided in connection with employment that exceed \$35 in value unless reported and approved in writing. Those gifts exceeding \$100 must be assigned or turned into the company. Gifts of nominal value, such as meal and entertainment courtesies are not hereby prohibited, but should comply with standard company policy.
- Gifts and benefits to clinicians or referral sources are not appropriate. However, occasional non-cash gifts that are limited to reasonable meal expenditures or entertainment or that are of nominal value (\$35) are not expressly prohibited.
- We shall not use or share inside information which is not otherwise available to the general public for any manner of direct or indirect personal gain or other improper use.
- We shall report any potential conflicts of interest concerning ourselves or our family members in accordance with Coram policies and procedures.